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This compilation includes  
PL 106-165, approved 12/9/99.

## SMALL BUSINESS ACT

(Public Law 85-536,<sup>1</sup> as amended)

Citation.

§ 1. This Act may be cited as the "Small Business Act".

§ 2. (a) 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.<sup>2</sup>

Policy of  
Congress.  
15 USC 631.

(b) (1)<sup>3</sup> 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 Act, to increase their ability to compete in international markets by--

- (A) enhancing their ability to export;
- (B) facilitating technology transfers;

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<sup>1</sup>Approved July 18, 1958 (72 Stat. 384).

<sup>2</sup>The subcontracts of contractors performing work or rendering services under Government procurement contracts were included within the policy statements of § 2(a) by § 6 of PL 87-305, approved Sept. 26, 1961 (75 Stat. 667).

<sup>3</sup>New sections 2(b)(1) and (2) added by § 8002 of PL 100-418, approved August 23, 1988 (102 Stat. 1553). Old subsections 2(b) through 2(e) redesignated as 2(c) through 2(f), respectively.

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(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 Act to enhance, not alter, their respective roles.

(c)<sup>4</sup> 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 Act are also to be used to assist such concerns.

(d) (1)<sup>5</sup> The assistance programs authorized by sections 7(i) and 7(j) of this Act 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)<sup>6</sup> (A) With respect to the programs authorized by section 7(j) of this Act, the Congress finds --

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<sup>4</sup>Former section 2(b), now 2(c) - see footnote 3 - added by § 112(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663). See § 18(b) of this Act for changes made by § 119(c) of PL 96-302, approved July 2, 1980 (94 Stat. 833), which affect disaster loan assistance to agricultural enterprises.

<sup>5</sup>Added by § 2(a)(1) of PL 93-386, approved August 23, 1974 (88 Stat. 742). Section 2(d)(2) added by § 203 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

<sup>6</sup>Former section 2(c)(2), now 2(d)(2), added by § 203 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

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(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.

(v) that the power to let<sup>7</sup> Federal contracts pursuant to section 8(a) of the Small Business Act 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 8(a) of the Small Business Act 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 7(j) of this Act to --

(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.<sup>8</sup>

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<sup>7</sup>Phrase "sole source" deleted by subsection 204(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

<sup>8</sup>The phrase "and development" in section 2(d)(2)(B)(i) and "in the marketplace" in section 2(d)(2)(B)(ii) added by § 204(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

(e)<sup>9</sup> 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.<sup>10</sup>

(f) (1) With 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,<sup>11</sup> Asian Pacific Americans,<sup>12</sup> Native Hawaiian Organizations,<sup>13</sup> 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

<sup>9</sup>Formerly § 2(b). Redesignated as § 2(c) by § 2(a)(1) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742). Redesignated as § 2(d) by § 112 (a) of PL 94-305, approved June 4, 1976 (90 Stat. 663). For redesignation as § 2(e) see footnote 3, *supra*.

<sup>10</sup>The last 15 words of this subsection (previously § 2(b)), added by § 305(b) of PL 87-70, the Housing Act of 1961, approved June 30, 1961 (75 Stat. 167). These words rendered moot by repeal of §§ 7(b)(3) through (9) by § 1913(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357).

<sup>11</sup>"Indian tribes" added by § 18015(a) of PL 99-272, approved April 7, 1986 (100 Stat. 370).

<sup>12</sup>"Asian Pacific Americans" added by § 118(a) of PL 96-302, approved July 2, 1980 (94 Stat. 833). Section 118(c)(1) of PL 96-302 further provides that this provision shall apply as if included in § 201 of PL 95-507, which added former § 2(e), now § 2(f), to the Small Business Act.

<sup>13</sup>Section 207(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3861), added "Native Hawaiian Organizations."

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(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 8(a) 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 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.<sup>14</sup>

(g)<sup>15</sup> In administering the disaster loan program authorized by section 7 of this Act, 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) (1)<sup>16</sup> With respect to the programs and activities authorized by this Act, 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;

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<sup>14</sup>Former subsection (e) (now (f) - see footnote 3) added by § 201 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757). Subsection 2(f)(2) rewritten by subsection 204(a)(2) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

<sup>15</sup>Subsection (g) added by § 118 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999).

<sup>16</sup>Subsection (h) added by § 101 of PL 100-533, the Women's Business Ownership Act of 1988, approved Oct. 25, 1988 (102 Stat. 2689).

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(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 Act 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 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)<sup>17</sup> PROHIBITION ON THE USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY WITHIN THE UNITED STATES.--None of the funds made available pursuant to this Act 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.

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<sup>17</sup>New subsection 2(i) added by § 609 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4204).

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Contract  
bundling.

(j)<sup>18</sup> **CONTRACT BUNDLING** - In complying with the statement of congressional policy expressed in subsection (a), 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.

§ 3<sup>19</sup> (a) (1) For the purposes of this Act, 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, aquaculture, and all other farming and agricultural related industries,<sup>20</sup> 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 \$500,000.<sup>21</sup> Small business defined.  
15 USC 632.

(2)<sup>22</sup> **ESTABLISHMENT OF SIZE STANDARDS.**—

Establishment of  
size standards.

<sup>18</sup> Subsection 2(j) added by § 411 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2617).

<sup>19</sup>Section 3 redesignated § 3(a) by § 224(b) of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757); redesignated § 3(a)(1) by § 921(f)(1) of PL 99-661, approved Nov. 14, 1986.

<sup>20</sup>The clause beginning with "including" added by § 112(b) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

<sup>21</sup>Provision defining agricultural enterprise as small business concern if it has annual receipts not in excess of \$500,000 added by § 18016 of PL 99-272, approved April 7, 1986 (100 Stat. 371). Language following this footnote signal was deleted by § 222(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 999). The deleted language is reprinted below:

In addition to the foregoing criteria the Administrator, in making a detailed definition may use these criteria, among others: Numbers 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 Act, 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.

<sup>22</sup>Subsection 3(a)(2) rewritten by § 301 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4187). Text of former subsection 3(a)(2), added by § 222(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 999), reprinted below:

(2) 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

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(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 Act 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

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as a small business concern for the purposes of this Act 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.

SMALL BUSINESS ACT

- (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) for purposes of this Act, 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, United States Code, but does not include the United States Postal Service or the General Accounting Office.<sup>23</sup>

"Federal  
agency".  
"Agency".

(c)<sup>24</sup> (1) For purposes of this Act, a qualified employee trust shall be eligible for any loan guarantee under section 7(a) with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

Small Business  
Employee  
Ownership Act  
of 1980.

(2) For purposes of this Act, the term "qualified employee trust" means, with respect to a small business concern, a trust --

"Qualified  
employee trust."

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) --

(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 such Code) 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 7(a), 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 7(a) shall be used solely for the purchase of qualifying employer securities of such concern,

<sup>23</sup>Section 3(b) added by § 224(b) of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

<sup>24</sup>New subsection 3(c) added by Title V, § 504, of PL 96-302, approved July 2, 1980 (94 Stat. 833). Title V may be cited as "Small Business Employee Ownership Act of 1980." Effective date is Oct. 1, 1980, according to § 507 of PL 96-302. See page 979 of this Handbook.

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(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 the Internal Revenue Code of 1954),

(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 tradable 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 the Internal Revenue Code of 1954) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 7(a), such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

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(d)<sup>25</sup> For purposes of section 7 of this Act, the term "qualified Indian tribe" means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern.

"Qualified Indian tribe."

(e) For purposes of section 7 of this Act, the term "public or private organization for the handicapped" means one --

"Public or private organization for the handicapped."

(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 individual;

(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)<sup>26</sup> For purposes of section 7 of this Act, the term "handicapped individual" means an individual—

"Handicapped 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) For purposes of section 7 of this Act, the term "energy measures" includes --

"Energy measures."

<sup>25</sup>New subsections 3(d) - 3(i) added by § 1903 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). For another definition of "credit elsewhere" [§ 3(h)] see § 18(b)(2) of this Act. For definition of "Indian Tribe" under § 8(a), see § 8(a)(13).

<sup>26</sup>Subsection 3(f) rewritten by § 401(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 243). Text of former subsection 3(f) is reprinted below:

For purposes of section 7 of this Act, 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.

- (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) For purposes of this Act, 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.

"Credit elsewhere."

(i) For purposes of section 7 of this Act, the term "homeowners" includes owners and lessees of residential property and also includes personal property.

"Homeowners."

(j)<sup>27</sup> For the purposes of section 7(b)(2) of this Act, 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. 1141(j)), 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

"Small agricultural cooperatives" [12 USC 1141(j)].

<sup>27</sup>Subsection (j) added by § 310 of PL 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Section 312 of PL 98-270 provides that this amendment shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under § 7(b)(2)(A), (B), or (C) of the Small Business Act or with respect to which a certification has been made after such date under § 7(b)(2)(D) of such Act.

## SMALL BUSINESS ACT

regard the association<sup>28</sup> as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k)<sup>29</sup> For the purposes of this Act, 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 308(b) of the Interjurisdictional Fisheries Act of 1986)<sup>30</sup>, ocean

"Disaster."

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<sup>28</sup>Subsection (j) amended by § 111(A)(6) of PL 98-473, approved Oct. 12, 1984 (98 Stat. 1837 at 1966), to eliminate the prior requirement that each member of the board of directors of the governing body individually qualify as a small business concern. The same amendment also substituted the term "business concern" for the prior "entity."

<sup>29</sup>Subsection (k) added by subsection 119(b)(1) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Subsection 119(b)(2) of PL 100-590 renumbered the second subsection 3(j) as 3(l).

<sup>30</sup>Reference to commercial fisheries was added by § 104(b)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-730). Section 104(b)(2) provided that the amendment shall be effective with respect to any disaster occurring on or after March 1, 1994.

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conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(l)<sup>30</sup> For purposes of this Act --

(1) The term "computer crime" means --

"Computer crime."

(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)<sup>31</sup> For purposes of this Act, the term "simplified acquisition threshold" has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 USC 403(11)).

"Simplified acquisition threshold."

(n)<sup>32</sup> For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if--

Small business concern owned and controlled by women.

(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)<sup>33</sup> DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS - In this Act:

(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.

"Bundled contract."

730). Section 104(b)(2) provided that the amendment shall be effective with respect to any disaster occurring on or after March 1, 1994.

<sup>30</sup>Subsection (l) (formerly (j)) added by § 6 of PL 98-362, approved July 16, 1984 (98 Stat. 431).

<sup>31</sup>Subsection 3(m) added by § 806(e)(1) of PL 101-510, approved Nov. 5, 1989 (104 Stat. 1593). The phrase "small purchase threshold" changed to "simplified acquisition threshold" by § 4404(a) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3349).

<sup>32</sup>Subsection 3(n) added by § 7106(d) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3376).

<sup>33</sup> Subsection 3(o) added by § 412 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2617).

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(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 SMALL 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.

"Separate smaller contract."

(p)<sup>34</sup> **DEFINITIONS RELATING TO HUBZONES** - In this Act:

(1) **HISTORICALLY UNDERUTILIZED BUSINESS ZONE** - The term "historically underutilized business zone" means any area located within 1 or more—

"Historically underutilized business zone."

(A) qualified census tracts;

(B) qualified nonmetropolitan counties; or

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

(2) **HUBZONE** - The term "HUBZone" means a historically underutilized business zone.

"HUBZone."

(3) **HUBZONE SMALL BUSINESS CONCERN** - The term "HUBZone small business concern" means a small business concern —

"HUBZone small business concern."

(A) that is owned and controlled by 1 or more persons, each of whom is a United States citizen; and

<sup>34</sup> Subsection 3(p) added by § 602(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2627).

(B) the principal office of which is located in a HUBZone; or

(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)(I) of the Internal Revenue Code of 1986.

“Qualified census tract.”

(B) QUALIFIED NONMETROPOLITAN COUNTY - The term “qualified nonmetropolitan county” means any county—

“Qualified nonmetropolitan 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 the Internal Revenue Code of 1986); and

[26 USC 143(k)(2)(B)].

(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.

(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;

(II) 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 31(b); 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 31, the small business concern will ensure that—

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(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; and

(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

(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 31(c)(1)—

(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 under [sic] 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 subclauses (IV) and (V) of subparagraph (A)(i) 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) 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.

(q)<sup>35</sup> DEFINITIONS RELATING TO VETERANS.—In this Act, 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, United States Code).

“Service-disabled veteran.”

(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—

“Small business concern owned and controlled by service-disabled veterans.”

(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—

“Small business concern owned and controlled by veterans.”

(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, United States Code.

“Veteran.”

§ 4. (a) In order to carry out the policies of this Act there is hereby 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

Small Business Administration.  
15 USC 633.

<sup>35</sup> Subsection 3(q) added by § 103(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 234). Section 103(b) of P.L. 106-50 provides:

APPLICABILITY TO THIS ACT.—In this Act, the definitions contained in section 3(q) of the Small Business Act, as added by this section, apply

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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 Act, 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.<sup>36</sup>

(b)<sup>37</sup> (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.<sup>38</sup> The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate.<sup>39</sup> The Administrator is authorized to appoint five<sup>40</sup> Associate Administrators (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958) to assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate

Administrator.

Deputy  
Administrator.

<sup>36</sup>Section 1721 of PL 90-448, the Housing and Urban Development Act of 1968, approved Aug. 1, 1968 (82 Stat. 610), amended § 4(a) to include the Trust Territory of the Pacific Islands. (Compare § 103(4) of the Small Business Investment Act of 1958, as amended, which defines the term "State" to include the several States, and Territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia). Part of the Trust Territory became the Commonwealth of the Northern Mariana Islands by virtue of PL 94-241, approved Mar. 24, 1976 (90 Stat. 263).

<sup>37</sup>Section 4(b) redesignated as subsection 4(b)(1) by § 401 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

<sup>38</sup>Sentence added by § 8 of PL 93-237, approved Jan. 2, 1974 (87 Stat. 1023). Section 701 of P.L. 106-50, approved August 17, 1999 (113 Stat. 249) provides:

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, relating to nondiscrimination and special considerations for veterans, and take all necessary steps to ensure that its provisions are fully and vigorously implemented.

<sup>39</sup>Sentence rewritten by § 1(a) of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2140), to provide for presidential appointment of the Deputy Administrator. Section 1(b) of P.L. 101-515 provides that "[t]he provisions of subsection (a) of 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." The same language appears in § 221 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2823).

<sup>40</sup>"Four" inserted in lieu of "three" by § 7(1) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742). "Five" inserted by § 201(a)(1) of P.L. 106-50, approved August 17, 1999 (113 Stat. 235). Section 201(a)(2) of P.L. 106-50 added the fifth Associate Administrator for Veterans Business Development.

Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 32. 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<sup>41</sup> and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of this Act which provide assistance to minority small business concerns.<sup>42</sup> 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.<sup>43</sup>

(2)<sup>44</sup> 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 --

Economic data base.

Economic indices, publication.

(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;

<sup>41</sup>The requirement that the Associate Administrator for Minority Small Business and Capital Ownership Development be in the competitive service or a career appointee added by § 401(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3873). Section 401(b) of PL 100-656 provides 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 Act shall be a career reserved position.

<sup>42</sup>The clause "and shall be responsible . . ." rewritten by § 103 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321).

<sup>43</sup>Section 8 of PL 89-779, the Small Business Investment Act Amendments of 1966, approved Nov. 6, 1966 (80 Stat. 1364), replaced the three Deputy Administrators previously authorized by § 4(b) and the Deputy Administrator authorized by § 201 of the Small Business Investment Act of 1958 with a single Deputy Administrator authorized to be Acting Administrator and three Associate Administrators. The Associate Administrator for Minority Small Business authorized by § 7(2) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742). Section 206 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757), changed "Associate Administrator for Minority Small Business" to "Associate Administrator for Minority Small Business and Capital Ownership Development."

<sup>44</sup>New subsection 4(b)(2) added by § 401 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

- (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. Annual report, publication.

(3)<sup>44</sup> RISK MANAGEMENT DATABASE.-

Risk management database.

<sup>44</sup>New subsection 4(b)(3) added by § 102 of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-725). Former subsection 4(b)(3) added by § 3 of PL 98-362, approved July 16, 1984, "Small Business Computer Security and Education Act of 1984 (98 Stat. 431). The Act was effective Oct. 1, 1984, per § 7(a) thereof. Section 4(b)(3) is extended to March 31, 1991, per § 212 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821). The same extension is enacted by § 11 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2145). The sunset date was extended to Oct. 1, 1994 by § 225 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1001); no further extensions were enacted. Expired § 4(b)(3) is reprinted below:

- (A) The Administrator shall, not later than ninety days after the effective date of the Small Business Computer Security and Education Act of 1984, establish an advisory council to be known as the Small Business Computer Security and Education Advisory Council (hereinafter referred to as the "advisory council").
- (B) The advisory council shall consist of the following members:
  - (i) an official of the Small Business Administration, appointed by the Administrator;
  - (ii) an official of the Institute for Computer Sciences and Technology of the Department of Commerce, appointed by the Secretary of Commerce;
  - (iii) an official of the Department of Justice, appointed by the Attorney General, who is knowledgeable about issues of computer security and its protection;
  - (iv) an official of the Department of Defense, appointed by the Secretary of Defense, who is knowledgeable about issues of computer security;

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- (v) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer hardware to small business concerns;
- (vi) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer software to small business concerns;
- (vii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer liability insurance to small business concerns;
- (viii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer security equipment and services to small business concerns;
- (ix) one individual, appointed by the Administrator, who is representative of the interests of associations of small business concerns, other than small business concerns engaging in any of the activities described in clauses (v) through (viii); and
- (x) such additional qualified individuals from the private sector, appointed by the Administrator, as the Administrator determines to be appropriate.

(C) It shall be the function of the advisory council to advise the Administration on --

- (i) the nature and scope of computer crimes committed against small business concerns;
- (ii) the effectiveness of Federal and State law in deterring computer-related crime activity or prosecuting computer-related crimes;
- (iii) the effectiveness of computer technology and management techniques available to small business for increasing their computer security;
- (iv) the development of information and guidelines to be made available to the Administrator to assist small business concerns in evaluating the security of computer systems; and
- (v) such other appropriate functions of the small business computer security and education program.

(D) The Administrator shall designate one of the non-Federal members of the advisory council as its chairperson. The advisory council shall meet at least annually and at such other times as requested by the Administrator. A majority of the members of the advisory council shall constitute a quorum. Vacancies on the council shall be filled in the same manner as the original appointment.

(E) Each member of the advisory council shall serve without additional pay, allowances, or benefits by reason of such service. Each non-Federal member shall be reimbursed for actual expenses, including travel expenses, as authorized by section 5703 of title 5, United States Code.

(F) Upon request of the chairperson of the advisory council, the Administrator may request directly from any Federal agency information necessary to enable the advisory council to carry out its functions under the Small Business Computer Security and Education Act of 1984. Upon the request of the Administrator, the head of such agency shall furnish to the Administrator such information, subject to the requirements of section 552 of title 5, United States Code.

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

(A) **ESTABLISHMENT.**-The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 of this Act and title V of the Small Business Investment Act of 1958, 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;

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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.

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- (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.

(c) (1)<sup>45</sup> There are hereby established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 5(e), 7(b)(1), 7(b)(2), 7(b)(3),<sup>46</sup>7(b)(4), and 7(c)(2)<sup>47</sup> of this Act; and (B) a

Revolving funds.

<sup>45</sup>Section 4(c) was substantially amended, effective July 1, 1966, by § 2 of PL 89-409, approved May 2, 1966 (80 Stat. 132), primarily to establish two revolving funds instead of the former single commingled fund. (A third revolving fund for carrying out the Lease Guarantee Program was established in § 403 of the SBIA of 1958, as amended. A fourth revolving fund for the Surety Bond Guarantee Program was later established in § 412 of the SBIA of 1958, as amended. A fifth separate revolving fund was also established by § 405 of the SBIA of 1958, as amended.) The amendment also added the requirement for quarterly reports to certain congressional committees on the status of the revolving funds and also the provision on preparing Agency budgets according to the Government Corporation Control Act. Section 4(c) was further amended by PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). Section 7(b)(3) functions were transferred from the business loan and investment fund to the disaster loan fund by § 401 of PL 95-89. Section 5(e) (loan moratorium) functions were placed in the disaster loan fund by § 304 of PL 95-89.

<sup>46</sup>"7(b)(4)" inserted after "7(b)(3)" by § 306 of PL 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Sections 7(b)(3) and (4) repealed by § 18006(a) of PL 99-272, approved April 7, 1986 (100 Stat. 366).

<sup>47</sup>Section 4(c)(1)(A) was amended by § 1913(b) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), to be effective on Oct. 1, 1981, per § 1918 of PL 97-35. This amendment deleted references to §§ 7(b)(4)-7(b)(8) and § 7(g).

business loan and investment fund which shall be available for financing functions performed under sections 5(g),<sup>48</sup> 7(a),<sup>49</sup> and 8(a) of this Act, and titles III, IV<sup>50</sup> and V of the Small Business Investment Act of 1958.

(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 5(e), 7(b)(1), 7(b)(2), 7(b)(3), 7(b)(4), 7(b)(5), 7(b)(6), 7(b)(7), 7(b)(8), 7(c)(2), and 7(g)<sup>51</sup> of this Act shall be paid into a disaster loan fund; and (B) pursuant to sections 5(g), 7(a), 7(e), 7(h), 7(i), 7(l),<sup>52</sup> 7(m),<sup>53</sup> and 8(a) of this Act, and titles III, IV and V of the Small Business Investment Act of 1958, shall be paid into the business loan and investment fund. Repayment.

(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.<sup>54</sup> Unexpended balances.

(4)<sup>55</sup> 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 Reports to Congress.

<sup>48</sup>Sections 4(c)(1)(B) and 4(c)(2)(B) were amended by § 5 of PL 98-352, Secondary Market Improvement Act of 1984, approved July 10, 1984 (98 Stat. 329), by adding § 5(g) (as shown above) to the financing functions for which the loan and investment fund is available. Budget  
business  
preparation.

<sup>49</sup>Section 4(c)(1)(B) was amended by § 1908 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), to be effective on Oct. 1, 1981, per § 1918 of PL 97-35. This amendment deleted references to §§ 7(e), 7(h), 7(i) and 7(l). Section 7(l) had previously been added by § 4 of PL 95-315, approved July 4, 1978 (92 Stat. 379).

<sup>50</sup>Title IV added to §§ 4(c)(1)(B) and (2)(B) by § 111(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995).

<sup>51</sup>"7(g)" added by § 201 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553).

<sup>52</sup>"7(l)" added by § 4 of P.L. 95-315, approved July 4, 1978 (92 Stat. 379).

<sup>53</sup>"7(m)" added by § 609(k)(2) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 831).

<sup>54</sup>Sentence authorizing appropriations to funds established by paragraph (1) deleted by § 101(b) of PL 95-89 (effective Oct. 1, 1977), approved Aug. 4, 1977 (91 Stat. 553). See § 20 of this Act, Authorization for appropriations.

<sup>55</sup>Former § 4(c)(4), dealing with program limits, repealed by § 101(c) of PL 95-89 (effective Oct. 1, 1977), approved Aug. 4, 1977 (91 Stat. 553). Section 102 of PL 95-89 amends § 20 of this Act and establishes program levels therein. Section 202 of PL 95-89 redesignated this paragraph [formerly (5)] as paragraph (4). It substitutes "Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives" for "the Committees on Banking and Currency of the Senate and House of Representatives" in the first sentence; deletes a reference to former paragraph (4) authorization and substitutes "Committees on Appropriations, the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives" for "Congress" in the last sentence. The Senate deleted the word "select" by S. Res. 101, 97th Cong., 1st Sess., Mar. 25, 1981.

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full and complete report on the status of each of the funds 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 102, 103 and 104 of the Government Corporation Control Act (31 USC 847-849)) for wholly owned Government corporations.

(5) (A)<sup>56</sup> 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 section 4(c)(1) of this Act 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 the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act, as amended, 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.

Borrowing  
authority for  
revolving  
funds.

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

(ii)<sup>57</sup> Following the close of each fiscal year, the Administration shall pay into the miscellaneous receipts of the United States Treasury the

<sup>56</sup>This paragraph, formerly paragraph (6), was redesignated paragraph (5) by § 202 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). Section 4(c)(5) rewritten by § 121 of PL 96-302, approved July 2, 1980 (94 Stat. 833), to provide for borrowing authority for SBA revolving funds.

<sup>57</sup>Section 4(c)(5)(B)(ii) rewritten by § 601 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4201). Former text of § 4(c)(5)(B)(ii) is set out below:

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

SMALL BUSINESS ACT

actual interest that the Administration collects during that fiscal year on all financings made under this Act.

(C) Except on those loan disbursements on which interest is paid under subsection (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 Act and titles III and V of the Small Business Investment Act of 1958 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 subsection (c)(1), but not previously reimbursed. Appropriation authorization.

(d) There is hereby 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.<sup>58</sup> Loan Policy Board.

(e)<sup>59</sup> PROHIBITION ON THE 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. Obscene material - assistance prohibited.

(f)<sup>60</sup> CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.-- Child support compliance.

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subsection (c)(5)(A)

<sup>58</sup>The SBA Loan Policy Board was abolished by Reorganization Plan No. 4 of 1965 (effective July 27, 1965; 30 F.R. 9353) and its functions transferred to the SBA Administrator.

<sup>59</sup>Subsection 4(e) added by § 611 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4204).

<sup>60</sup>Subsection 4(f) added by § 612 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4205).

(1) **IN GENERAL.**--For financial assistance approved after the promulgation of final regulations to implement this section, each recipient of financial assistance under this Act, 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 462(b) of the Social Security Act.

(2) **ENFORCEMENT.**--Not later than 6 months after the date of enactment of this subsection, the Administration shall promulgate such regulations as may be necessary to enforce compliance with the requirements of this subsection.

§ 5 (a) The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act; to define their authority and duties;<sup>61</sup> 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 non-reimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this Act.

Administratio  
powers.  
15 US

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

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;

Sue and be  
sued.

<sup>61</sup>The phrase "to provide bonds for them in such amounts as the Administrator shall determine" was deleted by § 224(a) of PL 92-310, approved June 6, 1972 (86 Stat. 206).

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- (2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this Act, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection; Dispose of property.
- (3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this Act; Utilize property.
- (4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5), shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this Act if the premium therefor or the amount thereof does not exceed \$1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this Act may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint; Collect claims.
- (5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 7(a) and 7(b); Acquire property.
- (6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this Act; Issue regulations.
- (7)<sup>62</sup> in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services Service of attorneys.

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<sup>62</sup>Section 5(b)(7) amended by § 114 of PL 96-302, approved July 2, 1980 (94 Stat. 833), to authorize SBA to delegate certain loan processing functions to qualified preferred lenders. For reference to such lenders, see § 7(a)(2). The proviso in § 5(b)(7) was rewritten by § 208(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747). The text of the former proviso is reprinted below:

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of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this Act: Provided, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 7(b) 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<sup>63</sup> 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;

Employ and reimburse temporary employees.

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

Accept free services.

(10) upon purchase by the Administration of any deferred participation entered into under section 7 of this Act, 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;<sup>64</sup>

Interest on participation purchased.

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this Act or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation,

Investigations.

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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;

<sup>63</sup>Proviso added by § 2 of P.L. 103-282, approved July 22, 1994 (108 Stat 1422).

<sup>64</sup>Added by § 3(1) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742).

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the Administration is empowered to administer oaths and affirmations, subpoena [sic] witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena [sic] 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;<sup>65</sup> and

(12)<sup>66</sup> 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--

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 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 Act and the Small Business Investment Act of 1958; and

(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.

<sup>65</sup>Added by § 3(1) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742).

<sup>66</sup>Paragraphs 5(b)(12) and (13) added by § 602 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4202).

Employ  
consultants.  
Experts and  
consultants,  
compensation and  
expenses.

SMALL BUSINESS ACT

(c) . To such extent as he finds necessary to carry out the provisions of this Act, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C., § 5). Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code.<sup>67</sup>

(d) Section 3648 of the Revised Statutes (31 U.S.C. 529) 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.<sup>68</sup>

Safety  
deposit  
boxes.

(e) (1)<sup>69</sup> Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this Act, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While such payments are being made by the Administration pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

Moratorium.

(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;

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<sup>67</sup>Last sentence of subsection (c) was amended by § 103 of PL 95-510, approved Oct. 24, 1978 (92 Stat. 1780), effective Oct. 1, 1979.

<sup>68</sup>Section 5(d) added by § 4 of PL 87-305, approved Sept. 26, 1961 (75 Stat. 666).

<sup>69</sup>Section 5(e), dealing with loan moratoriums, added by § 303 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). Former § 5(e), which was added by § 10 of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to establish a Chief Counsel for Advocacy, was repealed by § 208 of PL 94-305, approved June 4, 1976 (90 Stat. 663). Title II of PL 94-305, which provides for the establishment and functions of the Office of Advocacy, is set out at page 958 of this Handbook.

SMALL BUSINESS ACT

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

(C) the small business concern executes an agreement in writing satisfactory to the Administration as provided by paragraph (4).

(3) Notwithstanding the provisions of sections 7(a)(4)(C)<sup>70</sup> and 7(i)(1)<sup>71</sup> of this Act, 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.

Loan  
maturity  
extension.

(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 --

Repayment  
agreement.

(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 or 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.

"Required  
payments."

<sup>70</sup>Section 7(a)(4)(C) is now § 7(a)(5).

<sup>71</sup>Although the lending authority of § 7(i) was transferred to § 7(a)(11) by § 1902(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), existing § 7(i) inadvertently was not repealed by PL 97-35, supra.

SMALL BUSINESS ACT

(f) (1)<sup>72</sup> The guaranteed portion of any loan made pursuant this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

Secondary  
market.

(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 shall have been fully disbursed to the borrower prior to any sale.

(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 7(a) 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

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<sup>72</sup>Subsection 5(f) through (h) added by § 2 of PL 98-352, Small Business Secondary Market Improvements Act of 1984, approved July 10, 1984 (98 Stat. 329). Section 3 of PL 98-352 provides:

"Sec. 3(a) Within ninety days after the date of enactment of this Act, 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, and shall contract with an agent for an initial period of [sic] 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, 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 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, until final rules and regulations become effective."

SMALL BUSINESS ACT

sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.<sup>73</sup>

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a) of this Act, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 7(a)(6)(C)<sup>74</sup> or subsection (e) of this section.

(g) (1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, or under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 660):<sup>75</sup> 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.

Trust  
certificates.

(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.

Full faith  
and credit.

(4)<sup>76</sup> (A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50

Loan  
guarantee  
fees.

<sup>73</sup>The last sentence of § 5(f)(3) added by § 103(e) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-727).

<sup>74</sup>"5(e), 7(a)(6), or 7(a)(8)" deleted and replaced by current language by § 307(d) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4264).

<sup>75</sup>Last clause before proviso changed from "except separate trust certificates shall be issued for loans approved under section 7(a)(13)" by § 609(a) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 825). Previous language added by § 113 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2997).

<sup>76</sup>The first sentence of paragraph 5(g)(4) was rewritten by § 4(b)(1) of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297.)

## SMALL BUSINESS ACT

percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 7(a) of this Act: 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).

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Text of former sentence is reprinted below:

The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f): 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.

For applicability of the changes made by P.L. 104-36, see footnote to § 7(a)(2). Paragraph 5(g)(4) rewritten by § 3(a) of P.L. 103-81, approved August 13, 1993 (107 Stat. 780). Text of former § 5(g)(4) is reprinted below:

The Administration shall not collect any fee for any guarantee under this subsection: Provided, That nothing here shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

Section 3(b) of P.L. 103-81 provides that:

Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) 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 after August 31, 1993.

Section 7 of P.L. 103-81 provides that the changes made to § 5(g)(4) are repealed on September 30, 1996.

Section 6 of P.L. 103-81 provides:

The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [§§ 5(g)(4)(A) and 7(a)(2)(B) of the Small Business Act, respectively] 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. Not later than 16 months after the date of enactment, and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives 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.

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(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.

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

(A)<sup>77</sup> provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;

Central  
registration of  
certificates.

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

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on 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

"Seller."

(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.

<sup>77</sup>Subsection 5(h) was rewritten by § 205(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Former paragraphs 5(h)(1) - (4) were renumbered as subparagraphs 5(h)(1)(A) - (D) and new paragraph 5(h)(2) was added. Former paragraph 5(h)(1) (new 5(h)(1)(A)) was rewritten. Text of former § 5(h)(1) is set out below:

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

SMALL BUSINESS ACT

(2) 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.

§ 6. (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 Act. 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.

Depositaries of funds.  
15 USC 635.

(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 4(c) of this Act. 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.

§ 7. (a)<sup>78</sup> **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,<sup>79</sup> for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

Business loans.  
15 USC 636.

(1) IN GENERAL -

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<sup>78</sup>Section 7(a) was completely rewritten by Title XIX, § 1902, of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). Title XIX of PL 97-35 may be cited as the "Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981", per § 1901. New § 7(a) consolidated several former categorical programs into the § 7(a) regular business loan program to unify interest rates and loan terms. The new heading for § 7(a) was added by § 231(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

<sup>79</sup>The inclusion of Indian-owned small business concerns was made by § 231 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757) to create an exception to the longstanding policy that governmental entities may not receive SBA assistance. See O.D. 107, p. 1349. See § 3(d) which defines the term "qualified Indian tribe," previously defined at this point.

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(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.<sup>80</sup>

Credit  
elsewhere.

(B) BACKGROUND CHECKS<sup>81</sup> - Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, 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)<sup>82</sup> LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

SBA  
participation.

<sup>80</sup>The substance of this subsection was originally in prior §§ 7(a)(1) and 7(a)(2). The term "credit elsewhere" is defined in § 3(h). Former § 7(a)(1) used phrase "from non-Federal sources", which was added by § 112(c) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

<sup>81</sup>New subparagraph 7(a)(1)(B) added by § 231(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

<sup>82</sup>Section 7(a)(2) was rewritten by § 2 of P.L. 104-36, approved Oct. 12, 1995, (109 Stat. 295). Section 8 of P.L. 104-36 provides:

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act do not apply with respect to any 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.

(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, if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act.

For legislative history of former § 7(a)(2), see prior versions of this Handbook. Text of former § 7(a)(2) is set out below:

(2) 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 percent of the balance of the financing outstanding at the time of disbursement if such financing does not exceed \$155,000; Provided, That the percentage of participation by the Administration may be reduced below 90 percent upon request of the participating lender; and

(B) subject to the limitation in paragraph (3) —

(i) not less than 70 percent nor more than 85 percent of the financing outstanding at the time of disbursement if such financing exceeds \$155,000; Provided, That the participation by the Administration may be reduced below 70 percent upon request of the participating lender;

(ii) not less than 75 percent of the financing outstanding at the time of disbursement, if such financing is more than \$155,000 and the period of maturity of such financing is more than 10 years, except that the participation by the Administration may be reduced below 75 percent upon request of the participating lender;

(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 disbursement of the loan, if such balance exceeds \$100,000; or

(ii) 80 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 \$100,000.

(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,

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(iii) not less than 85 percent of the financing outstanding at the time of disbursement, if such financing is more than \$155,000 and the period of maturity of such financing is 10 years or less, except that the participation by the Administration may be reduced below 85 percent upon request of the participating lender; and

(iv) not less than 85 percent nor more than 90 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (14) or (16).

The Administration shall not use the percent of guarantee requested as a criterion for establishing priorities in approving guarantee requests nor shall the Administration reduce the percent guaranteed to less than the above specified percentums other than by determination made on each application. Notwithstanding subparagraphs (A) and (B), the Administration's participation under the Preferred Lenders Program or any successor thereto shall be not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the request of the participating lender. As used in this subsection, the term "Preferred Lenders Program" means a program 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) authority to service and liquidate such loans. 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 section 7(a).

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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 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender-

"Preferred Lenders Program."

(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<sup>53</sup> 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)<sup>54</sup> **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.

Export Working Capital Program.

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

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed \$750,000, except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed \$1,250,000,<sup>55</sup> of which not more than \$750,000 may be used for working capital, supplies or financings under section 7(a)(14) for export purposes; and

<sup>53</sup>Language following the footnote signal (and word "complete") added by § 103(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726).

<sup>54</sup>Paragraph 7(a)(2)(D) added by § 111 of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-733).

<sup>55</sup>Amount changed from \$1,000,000 by § 210 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). The same section also changed the amount to be allowed for working capital, supplies or revolving lines of credit from \$250,000 and provided that such amount would not be in addition to the \$1,250,000 limit.

(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.<sup>86</sup>

(4) INTEREST RATES AND FEES.

(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<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup>

Interest  
rates.

(B)<sup>90</sup> 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.

<sup>86</sup>Paragraph 7(a)(3) rewritten by paragraph 8007(a)(2) of PL 100-418, approved August 23, 1988 (102 Stat. 1560). Prior language of paragraph 7(a)(3) read:

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 Act 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.

The \$500,000 loan limit raised from \$350,000 by § 111 of PL 94-305, approved June 4, 1976 (90 Stat. 663).

<sup>87</sup>The first clause of this paragraph was added by § 104 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 988). The previous language read: "The rate of interest on financings made on a deferred basis shall be legal and reasonable but".

<sup>88</sup>Section 7(a)(4) was completely rewritten by § 1902 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 768). See § 8 of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742) for prior text. The original Act (see footnote 1) provided an interest rate limit of 5 1/2%.

<sup>89</sup>This proviso on interest rates originally provided in § 7(h)(2).

<sup>90</sup>Subparagraph 7(a)(4)(B) added by § 103(f)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-727).

(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.

(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.<sup>91</sup>

Maximum term.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.<sup>92</sup> Provided, however, That --

Reasonable assurance of repayment.

(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;

Handicapped loans.

(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

Energy measures.

(C) [Repealed]<sup>93</sup>.

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.

<sup>91</sup>Substance of this provision was originally in prior § 7(a)(4)(C). Former period was ten years with twenty years for business loans for constructing facilities. Section 103 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 268), extended from 10 years to 15 years the maximum term of the portion of business loans made for constructing facilities. Section 108(b) of PL 94-305, approved June 4, 1976 (90 Stat. 663), extended this period from 15 to 20 years. Extended to 25 years by § 1902 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357).

<sup>92</sup>Language of this subsection identical to prior § 7(a)(7) up to this footnote. Provisos and remaining § 7(a)(6) were added in revisions to § 7(a) by PL 97-35, supra.

<sup>93</sup>Section 7(a)(6)(C) was repealed Oct. 1, 1985, per "sunset" provisions of § 1910 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357).

(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)<sup>94</sup> The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38, United States Code).

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale: Provided, however, That such loans shall not be used primarily for the acquisition of land.<sup>95</sup>

(10) The Administration may provide guaranteed<sup>96</sup> 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.<sup>97</sup>

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 2(c) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(12) (A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: Provided, however, That such loan proceeds shall not be used primarily for research and development.<sup>98</sup>

<sup>94</sup>Section 7(a)(8) was repealed Oct. 1, 1985, per "sunset" provisions of § 1910 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). New § 7(a)(8) was added by § 706 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2637).

<sup>95</sup>This language as originally in initial paragraph of prior § 7(a). Section 301 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553) amended § 7(a) specifically to authorize SBA to make regular business loans to small homebuilders to finance residential or commercial construction for sale, providing such loans may not be used primarily for the acquisition of land.

<sup>96</sup> The word "guaranteed" and the reference to service-disabled veterans added by § 401(b) of P.L. 106-50, approved August 17, 1999 (113 Stat. 244).

<sup>97</sup>See § 3(e) for definition of "public or private organization for the handicapped" and § 3(f) for definition of "handicapped individual", previously at § 7(h). Subsections 7(a)(10) through (13) consolidated former §§ 7(e), (h), (l) and (i), per § 1902 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 770).

<sup>98</sup>See § 3(g) for definition of "energy measures", previously at § 7(l).

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(B)<sup>99</sup> The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control

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<sup>99</sup>Section 7(a)(12)(b) added by subsection 111(c) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995). "(B)" substituted for "(b)" by editor of this Handbook.

facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. 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.

Development  
companies.

(14) (A) The Administration may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes and<sup>99</sup> 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 extensions and revolving lines of credit as may be legal and reasonable.

Export  
working  
capital.

(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.

(C) The Administration shall aggressively market its export financing program to small businesses.<sup>100</sup>

(15) (A)<sup>101</sup> 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.

Qualified  
employee  
trusts.

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for "(b)" by editor of this Handbook.

<sup>99</sup>Paragraph 7(a)(14)(A) was amended to include standby letters of credit and other financing by § 209 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). The same section deleted the 3-year limitation. The term "pre-export" was deleted by § 202(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2818). The period for extension of credit was extended from 18 months to 3 years by § 202(2) of P.L. 101-574.

<sup>100</sup>This language was added by § 112 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321) as part of "Small Business Export Expansion Act of 1980", which is enacted in Title I, Part B of PL 96-481. See pages 983 and 984 of this Handbook. Subsection 7(a)(14) was rewritten by §8005 of PL 100-418, approved August 23, 1988 (102 Stat. 1557).

<sup>101</sup>Loan guarantees for qualified employee trusts were originally provided in prior § 7(a)(8) which was added by title V, § 505 of PL 96-302, approved July 2, 1980 (94 Stat. 833). Title V of PL 96-302 may be cited as the "Small Business Employee Ownership Act of 1980." Effective date was Oct. 1, 1980, per § 507 of PL 96-302. See § 3(c) and also page 979 of this Handbook.

(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 the Internal Revenue Code of 1954), 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, [26 USC 401].

(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated, and Periodic reviews.

(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. Loan guarantee criteria, restriction.

(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. Report to Congress.

(16) (A)<sup>102</sup> The Administration may guarantee loans under this paragraph 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, if the Administration determines that the appropriate upgrading of plant and equipment will International trade.

<sup>102</sup>New paragraphs 7(a)(16) and (17) added by paragraph 8007(a)(3) of PL 100-418, approved August 23, 1988 (102 Stat. 1560). Existing paragraph 7(a)(16), added by §18007 of PL 99-272, approved April 7, 1986 (100 Stat. 366), redesignate 7(a)(18) by paragraph 8007(a)(4) of PL 100-418.

SMALL BUSINESS ACT

allow the concern to improve its competitive position. Each such loan shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan.<sup>103</sup>

(B) A small business concern shall be considered to be engaged in or adversely affected by international trade for purposes of this provision if such concern is, as determined by the Administration in accordance with regulations that it shall develop--

(i) in a position to significantly expand existing export markets or develop new export markets; or

(ii) adversely affected by import competition in that it is--

(I) confronting increased direct competition with foreign firms in the relevant market; and

(II) can demonstrate injury attributable to such competition.

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18)<sup>104</sup> GUARANTEE FEES.--

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, in an amount equal to the sum of--

(i) 3 percent of the amount of the deferred participation share of the loan that is less than or equal to \$250,000;

(ii) if the deferred participation share of the loan exceeds \$250,000, 3.5 percent of the difference between--

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<sup>103</sup>The last sentence of § 7(a)(16)(A) deleted by § 245 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827). The deleted sentence read: "The lender shall agree to sell the loan in the secondary market as authorized in sections 5(f) and 5(g) of this Act within 180 days of the date of disbursement."

<sup>104</sup>Section 7(a)(18) was rewritten by § 3 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 296). See footnote with § 7(a)(2) for language regarding applicability of P.L. 104-36 to loans made before enactment. Text of former § 7(a)(18) is set out below:

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.

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(I) \$500,000 or the total deferred participation share of the loan, whichever is less; and

(II) \$250,000; and

(iii) if the deferred participation share of the loan exceeds \$500,000, 3.875 percent of the difference between--

(I) the total deferred participation share of the loan;

and

(II) \$500,000.

(B) EXCEPTION FOR CERTAIN LOANS.—Notwithstanding subparagraph (A), if the total deferred participation share of a loan guaranteed under this subsection is less than or equal to \$80,000, the guarantee fee collected under subparagraph (A) shall be in an amount equal to 2 percent of the total deferred participation share of the loan.

(19)<sup>105</sup> (A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

Certified  
Lenders  
Pro

(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,<sup>106</sup> the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.<sup>107</sup>

<sup>105</sup>Section 7(a)(19), added by subsection 302(a) of PL 100-533, approved Oct. 25, 1988 (102 Stat. 2693), rewritten by § (2) of PL 101-162, approved Nov. 21, 1989 (103 Stat. 1025).

<sup>106</sup>Phrase "during fiscal years 1989, 1990, and 1992" deleted by § 4 of PL 102-191, approved Dec. 5, 1991 (105 Stat. 1591).

<sup>107</sup>Sections 7(a)(19)(B)(ii) and (C) were repealed by § 3(b) of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 296). See footnote with § 7(a)(2) for language regarding applicability of P.L. 104-36 to loans made before the date of enactment. Text of former §§ 7(a)(19)(B)(ii) and (C) is set out below:

(ii) allow such lenders to retain one-half of the fee collected pursuant to section 7(a)(18) 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.

SMALL BUSINESS ACT

(C)<sup>108</sup> Authority to liquidate loans.-

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)<sup>109</sup> (A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that-

8(a) loans.

(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

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(C) 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.

<sup>108</sup>New subparagraph 7(a)(19)(C) added by § 103(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726).

<sup>109</sup>Subsection 7(a)(20) added by § 302 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3867), effective Oct. 1, 1989, per § 803 thereof.

(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 amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

Defen  
econom  
transition  
loans.

(21)<sup>110</sup> (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<sup>111</sup> 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) 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)<sup>112</sup> **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--

Job creation.

<sup>110</sup> Paragraph 7(a)(21) added by § 211 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 997). The phrase "on a guaranteed basis" was added by § 605(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

<sup>111</sup> Reference to veterans added by § 404 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

(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)<sup>113</sup> 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.

Penalty  
fee.

(23)<sup>114</sup> ANNUAL FEE.--

Annual  
fee.

(A) IN GENERAL.--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.

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

(24)<sup>115</sup> 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.

Notice to  
Congress.

(25)<sup>116</sup> LIMITATION ON CONDUCTING PILOT PROJECTS.-

<sup>112</sup>Paragraph 7(a)(21)(E) added by § 603 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4202).

<sup>113</sup>Subsection 7(a)(22) added by § 4 of P.L. 103-81, approved August 13, 1993 (107 Stat. 781).

<sup>114</sup>New subsection 7(a)(23) added by § 4 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 296).

<sup>115</sup>New subparagraph 7(a)(24) added by § 5 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297).

<sup>116</sup>Paragraph 7(a)(25) added by § 103(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726).

SMALL BUSINESS ACT

(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.

"Pilot program."

(C) LOW DOCUMENTATION LOAN PROGRAM.-The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after the date of enactment of this subsection, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

Low-Doc Program.

(26)<sup>116</sup> CALCULATION OF SUBSIDY RATE.-All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing loans under this Act.

Subsidy rate.

[2 USC 661a].

(27)<sup>117</sup> YEAR 2000 COMPUTER PROBLEM PROGRAM—

Year 2000 computer problem.

<sup>116</sup>Paragraph 7(a)(26) added by § 103(d) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-727).

<sup>117</sup>Paragraph 7(a)(27) was added by § 3(a) of P.L. 106-8, approved April 2, 1999 (113 Stat. 13). Section 2 of that act provides:

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 business 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.

Section 3 of P.L. 106-8 further provides:

(b) GUIDELINES—

(1) IN GENERAL—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue guidelines to carry out the program under section 7(a)(27) of the Small Business Act, as added by this section.

SMALL BUSINESS ACT

(A) DEFINITIONS—In this paragraph—

(i) the term “eligible lender” means any lender designated by the Administration as eligible to participate in the general business loan program under this subsection; and

“Eligible lender.”

(ii) the term “Year 2000 computer problem” means, with respect to information technology, and embedded systems, any problem that adversely effects the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date-dependent data—

“Year 2000 computer problem.”

(I) from, into, or between—

(aa) the 20th or 21st centuries; or

(bb) the years 1999 and 2000; or

(II) with regard to leap year calculations.

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(2) REQUIREMENTS—Except to the extent that it would be inconsistent with this section or section 7(a)(27) of the Small Business Act, as added by this section, the guidelines issued under this subsection shall, with respect to the loan program established under section 7(a)(27) of the Small Business Act, as added by this section—

(A) provide maximum flexibility in the establishment of terms and conditions of loans originated under the loan program so that such loans may be structured in a manner that enhances the ability of the applicant to repay the debt;

(B) if appropriate to facilitate repayment, establish a moratorium on principal payments under the loan program for up to 1 year beginning on the date of the origination of the loan;

(C) provide that any reasonable doubts regarding a loan applicant’s ability to service the debt be resolved in favor of the loan applicant; and

(D) authorize an eligible lender (as defined in section 7(a)(27)(A) of the Small Business Act, as added by this section) to process a loan under the loan program in accordance with the requirements applicable to loans originated under another loan program established pursuant to section 7(a) of the Small Business Act (including the general business loan program, the Preferred Lender Program, the Certified Lender Program, the Low Documentation Loan Program, and the SBAExpress Pilot Program), if—

(i) the eligible lender is eligible to participate in such other loan program; and

(ii) the terms of the loan, including the principal amount of the loan, are consistent with the requirements applicable to loans originated under such other loan program.

(c) REPEAL—Effective on December 31, 2000, this section and the amendments made by this section are repealed.

(B) ESTABLISHMENT OF PROGRAM—The Administration shall—

(i) establish a loan guarantee program, under which the Administration may, during the period beginning on the date of enactment of this paragraph and ending on December 31, 2000, guarantee loans made by eligible lenders to small business concerns in accordance with this paragraph; and

(ii) notify each eligible lender of the establishment of the program under this paragraph, and otherwise take such actions as may be necessary to aggressively market the program under this paragraph.

(C) USE OF FUNDS—A small business concern that receives a loan guaranteed under this paragraph shall only use the proceeds of the loan to—

Use of funds.

(i) address the Year 2000 computer problems of that small business concern, including the repair and acquisition of information technology systems, the purchase and repair of software, the purchase of consulting and other third party services, and related expenses; and

(ii) provide relief for a substantial economic injury incurred by the small business concern as a direct result of the Year 2000 computer problems of the small business concern or of any other entity (including any service provider or supplier of the small business concern), if such economic injury has not been compensated for by insurance or otherwise.

(D) LOAN AMOUNTS—

Loan amounts.

(i) IN GENERAL—Notwithstanding paragraph (3)(A) and subject to clause (ii) of this subparagraph, a loan may be made to a borrower under this paragraph even if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund, the business guaranty loan financing account, and the business direct loan financing account would thereby exceed \$750,000.

(ii) EXCEPTION—A loan may not be made to a borrower under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund, the business guaranty loan financing account, and the business direct loan financing account would thereby exceed \$1,000,000.

(E) ADMINISTRATION PARTICIPATION—Notwithstanding paragraph (2)(A), in an agreement to participate in a loan under this paragraph, participation by the Administration shall not exceed—

SMALL BUSINESS ACT

(i) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance exceeds \$100,000;

(ii) 90 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance is less than or equal to \$100,000; and

(iii) notwithstanding clauses (i) and (ii), in any case in which the subject loan is processed in accordance with the requirements applicable to the SBAExpress Pilot Program, 50 percent of the balance outstanding at the time of disbursement of the loan.

(F) PERIODIC REVIEWS—The Inspector General of the Administration shall periodically review a representative sample of loans guaranteed under this paragraph to mitigate the risk of fraud and ensure the safety and soundness of the loan program.

Inspector  
General  
review.

(G) ANNUAL REPORT—The Administration shall annually submit to the Committees on Small Business of the House of Representatives and the Senate a report on the results of the program carried out under this paragraph during the preceding 12-month period, which shall include information relating to—

Report to  
Congress.

(i) the total number of loans guaranteed under this paragraph;

(ii) with respect to each loan guaranteed under this paragraph—

(I) the amount of the loan;

(II) the geographic location of the borrower; and

(III) whether the loan was made to repair or replace information technology and other automated systems or to remedy an economic injury; and

(iii) the total number of eligible lenders participating in the program.

(b)<sup>118</sup> Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts --

Disaster loans.

<sup>118</sup>Sections 7(b)(1) and 7(b)(2) rewritten by § 1911 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357); the exception for agricultural enterprises was added by § 18006 of PL 99-272, approved April 7, 1986 (100 Stat. 366).

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(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;<sup>119</sup> 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;<sup>120</sup>

(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;<sup>121</sup> (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C)<sup>122</sup> during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with

Disaster mitigation pilot program.

<sup>119</sup>The phrase "floods, riots or civil disorders, or other catastrophes" in § 7(b)(1)(A) was replaced by current language by subsection 119(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Subsection 119(b) of the same Act provided the definition of "disaster" in § 3(k) of the Small Business Act.

<sup>120</sup>Second proviso in subparagraph 7(b)(1)(A) added by § 121 of PL 100-590.

<sup>121</sup>"Credit elsewhere" defined in § 3(h).

<sup>122</sup>New subparagraph 7(b)(1)(C) added by § 1(a) of P.L. 106-24, approved April 27, 1999 (113 Stat. 39). Section 1(c) of P.L. 106-24 provides:

EVALUATION.—On January 31, 2003, the Administrator of the Small Business Administration shall 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 section 7(b)(1)(C) of the Small Business Act (15 U.S.C. 636(b)(1)(C)), as added by subsection (a) of this section, which report shall include—

- (1) information relating to—
  - (A) the areas served under the pilot program;
  - (B) the number and dollar value of loans made under the pilot program; and
  - (C) the estimated savings to the Federal Government resulting from the pilot program; and
- (2) such other information as the Administrator determines to be appropriate for evaluating the pilot

SMALL BUSINESS ACT

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<sup>123</sup> 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;<sup>124</sup> or [42 USC 5121].

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961);<sup>125</sup> or

(C)<sup>126</sup> a disaster, as determined by the Administrator of the Small Business Administration; or

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program.

<sup>123</sup>The phrase "small business concern or small agricultural cooperative" or similar conforming language substituted in lieu of "small business concern" throughout § 7(b)(2) by § 311 of PL 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Section 312 of P.L. 98-270 provides that this amendment shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under § 7(b)(2)(A), (B), or (C) of the Small Business Act or with respect to which a certification has been made after such date under § 7(b)(2)(D) of such Act. Note: See also § 3(j) of the Small Business Act, defining "small agricultural cooperative."

<sup>124</sup>The reference to the 1950 Act deleted and existing language inserted by subsection 109(f)(1) of PL 100-707, approved Nov. 23, 1988 (102 Stat. 4708). "Major disaster" is defined in § 102(2) of the 1974 Act, as amended by § 103(c) of PL 100-707, supra.

<sup>125</sup>Section 1(a) of PL 88-264, approved Feb. 5, 1964 (78 Stat. 7), extended paragraph (2) beyond its former scope relating solely to drought and excessive rainfall disasters. The Act referred to is now the Consolidated Farm and Rural Development Act.

<sup>126</sup>Former paragraphs (C), (D) and (E) were originally added by § 403 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). Paragraphs (C) and (D) were amended by § 1911 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), which also deleted previous paragraph (E). PL 98-166, approved Nov. 28, 1983 (97 Stat. 1071 at 1079), provides that beginning with disasters commencing between Jan. 1, 1983, through Sept. 30, 1983, the determination of a natural disaster by the Secretary of Agriculture pursuant to 7 USC 1961 shall be deemed a disaster declaration by the Administrator of SBA for eligibility purposes under § 7(b)(1) for agricultural enterprises as defined in § 18(b) of the Small Business Act.

## SMALL BUSINESS ACT

(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<sup>127</sup> 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.<sup>128</sup>

Credit  
elsewhere

<sup>127</sup> Section 311 of PL 98-270, approved April 18, 1984 (98 Stat. 157), added "or small agricultural cooperatives" here.

<sup>128</sup> Sections 7(b)(3) and (4), providing non-physical disaster loans to small business concerns, were repealed by § 18006(a) of PL 99-272, approved April 7, 1986 (100 Stat. 366). Section 18006(b) of PL 99-272 provides that SBA should continue to accept, process and approve loan applications under paragraphs (1) - (4) of subsection 7(b) and shall obligate and disburse loan funds on account of disasters declared before Oct. 1, 1985, even if such application is filed after April 7, 1986. PL 99-349, approved July 2, 1986 (100 Stat. 718), amends § 18006(b) to apply to a disaster which occurred prior to Oct. 1, 1985, and with respect to which a disaster declaration application was submitted prior to Oct. 1, 1985. The text of repealed paragraphs (3) and (4) is provided:

(3) 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 to assist any small business concern in effecting continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods of operation made necessary by direct action of the Federal Government or as a consequence of Federal Government action or to meet requirements or restrictions imposed on such concern under any Federal law heretofore or hereafter enacted or any State law enacted in conformity therewith, or any regulation or order of a duly authorized Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury or be unable to market a product without assistance under this paragraph: Provided, That the maximum loan made to any small business concern under this paragraph shall not exceed \$500,000 and the amount thereof shall be based solely on a determination made on each application: Provided further, That no loan or guarantee shall be extended unless the Administration finds that the applicant is unable to obtain credit elsewhere. For the 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, shall be deemed to be a consequence of Federal Government Action; and

(4) To 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) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under section 7(a) of this Act which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is 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 is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan made hereunder shall exceed \$100,000, nor shall the proceeds thereof be used to reduce the exposure of any

## SMALL BUSINESS ACT

(3)<sup>129</sup> (A) In this paragraph—

other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.

Prior history of repealed paragraphs (3) and (4):

Former §§ 7(b)(3) - 7(b)(9) repealed by § 1913(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). A new § 7(b)(3) was added which contained a "credit elsewhere" test. These amendments were effective Oct. 1, 1981, per § 1918 of PL 97-35. See also § 23(2) of the Small Business Act. The words "continuation of" after "in effecting" added by § 308 of PL 98-270, approved April 18, 1984, effective Oct. 1, 1983. Words "heretofore of hereafter enacted" were in prior § 7(b)(5) and were originally added by § 302 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553), to resolve the question of retroactivity of prior § 7(b)(5).

Elements of this subsection are derived from previous § 7(b)(5) which was added by § 2 of PL 93-237, approved Jan. 2, 1974 (87 Stat. 1023). Previous § 7(b)(5) consolidated and expanded existing SBA authority to finance small businesses required to make structural, operational and other changes by Federal laws or State laws enacted in conformity therewith, to comply with environmental, consumer, pollution, and safety standards. The section consolidated three subsections of the Small Business Act into a single section: the Coal Mine Health and Safety Act of 1969 (subsection 7(b)(5) of the Small Business Act), the Occupational Safety and Health Act of 1970 (subsection 7(b)(5)), and the Egg Product Inspection Act of 1970 (which also extended eligibility to small firms affected by the Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968 (subsection 7(b)(6)). "Credit elsewhere" defined in § 3(h).

The sentence in former § 7(b)(3) relating to payment-in-kind beginning "For the purposes of this paragraph . . . was added by § 308 of PL 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

Former subsection 7(b)(4) added by § 304 of PL 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

<sup>129</sup> New paragraph 7(b)(3) added by § 402(b) of P.L. 106-50, approved August 17, 1999 (113 Stat. 245). That section further provides:

(c) **ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE.**—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, including information regarding the appropriate local office at which affected small businesses may seek such assistance.

(d) **GUIDELINES.**—Not later than 30 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section and the amendments made by this section.

(e) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this section.

(2) **DISASTER LOANS.**—The amendments made by subsection (b) shall apply to economic injury suffered or likely to be suffered as the result of a period of military conflict occurring or ending on March 24, 1999.

(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;

"Essential employee."

(ii) the term "period of military conflict" has the meaning given the term in subsection (n)(1); and

"Period of military conflict."

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

"Substantial economic injury."

(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.

## SMALL BUSINESS ACT

[THE FOLLOWING PARAGRAPHS PRECEDING SUBSECTION 7(c)  
APPLY TO THE ENTIRE SUBSECTION 7(b).]

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<sup>130</sup> 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 subsection (b), except as

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<sup>130</sup> "Homeowners" defined in § 3(i).

provided in subsection (c),<sup>130</sup> 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.<sup>131</sup> 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

Disaster loans,  
interest rate.

<sup>130</sup>The clause "except as provided in subsection (c)" in this paragraph added by PL 96-38, approved July 25, 1979 (93 Stat. 97, 118). Reference is to § 7(c)(5) of this Act.

<sup>131</sup>Section 114 of PL 94-305, approved June 4, 1976 (90 Stat. 663), established a uniform interest rate on SBA's share of all loans made under § 7(b). See § 9 of PL 93-24, approved April 20, 1973 (87 Stat. 24) at page 910 of this Handbook which is superseded insofar as it covers the interest rates on loans under §§ 7(b)(1), (2), and (4) but also provides that no portion of any such loans resulting from disasters occurring on or after April 20, 1973, is subject to cancellation. See § 120 of PL 96-302, approved July 2, 1980 (94 Stat. 833), at page 981 of this Handbook, for amendments to Consolidated Farm and Rural Development Act which attempt to harmonize interest rate provisions. [Current (1989) interest rates are in § 7(c)(5)].

## SMALL BUSINESS ACT

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.<sup>132</sup>

Report to  
Congress.

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 be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a 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 program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon

<sup>132</sup>The part of this undesignated paragraph beginning with "Notwithstanding any other provision of law" through the end added by § 405 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). Interest rate changes made therein are retroactive on a fixed term only.

## SMALL BUSINESS ACT

presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that --

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971, but prior to January 1, 1972, the total amount so canceled shall not exceed \$2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972, but prior to July 1, 1973, the total amount so canceled shall not exceed \$5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.<sup>133</sup>

With respect to any loan referred to in clause (D) which is outstanding on the date of enactment of this paragraph, the Administrator shall --

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of such date of enactment; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, 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.

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.<sup>134</sup>

Penalty.

(E)<sup>135</sup> 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 to a disaster loan under paragraph (1), (2), or (4) of this subsection.

Duplication of disaster benefits. [42 USC 5155].

<sup>133</sup>See preceding two footnotes for modification of interest rate and elimination of cancellation benefit.

<sup>134</sup>The matter following the numbered paragraphs of § 7(b) rewritten by § 1(a) of PL 92-385, approved Aug. 16, 1972 (86 Stat. 554). Section 1(b) of PL 92-385 provides that the paragraph which provided for a civil penalty shall apply only with respect to loans made on or after Aug. 16, 1972; and § 1(c) provides 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; (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.

<sup>135</sup>Section 7(b) amended by § 124 of PL 96-302, approved July 2, 1980 (94 Stat. 833) by adding to the end thereof new subparagraph (E). Section 7(b)(4) repealed by § 1913 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). The reference to PL 93-288 deleted and reference to Disaster Relief and Emergency Assistance Act substituted by § 109(f)(2) of PL 100-707, approved Nov. 23, 1988 (102 Stat. 4708).

SMALL BUSINESS ACT

(c) (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.

Terms of loan extended.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b), the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: Provided, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.<sup>136</sup>

(3) With respect to a disaster occurring on or after October 1, 1978, and prior to the effective date of this Act,<sup>137</sup> on the Administration's share of loans made pursuant to paragraph (1) of subsection (b) --

Interest rates from 10/1/78 to 8/13/81.

(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<sup>138</sup>

Disaster loan interest rates.

(C)<sup>139</sup> 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

<sup>136</sup>Section 7(c)(2) added by § 1(b) of PL 89-59, approved June 30, 1965 (79 Stat. 206).

<sup>137</sup>Previous date of "October 1, 1982" changed to "October 1, 1983" by § 119(b) of PL 96-302, approved July 2, 1980 (94 Stat. 833). The date "October 1, 1983" was then amended to read "the effective date of this Act" by § 1914 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). The "effective date of this Act" is deemed to refer to the effective date of Title XIX of PL 97-35, the Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981, i.e. Aug. 13, 1981.

<sup>138</sup>Section 7(c)(3) added by PL 96-38, approved July 25, 1979 (93 Stat. 97, 118). "Credit elsewhere" defined in §§ 3(h) and 18(b) of this Act.

<sup>139</sup>Section 7(c)(3)(C) added by § 119(a) of PL 96-302, approved July 2, 1980 (94 Stat. 833). This amendment shall not apply to any disaster which commenced on or before the effective date of PL 96-302 (i.e. July 2, 1980) per § 119(d) of PL 96-302.

SMALL BUSINESS ACT

elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent:

Provided, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: Provided further, That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed \$500,000<sup>140</sup> for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.

(4)<sup>141</sup> Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be --

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

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<sup>140</sup>Public Law 103-75, approved Aug. 12, 1993 (107 Stat. 740), provides:

[N]otwithstanding any other provisions 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 shall be increased to \$1,500,000 for disasters commencing on or after April 1, 1993.

While Congress may have intended this to be a permanent change, the language appears only in a supplemental appropriations act and does not amend the Small Business Act.

<sup>141</sup>New § 7(c)(4) added by § 1912 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), provides interest rates for the § 7(b) loans described therein. "Credit elsewhere" defined in § 3(h).

SMALL BUSINESS ACT

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.<sup>142</sup>

(5)<sup>143</sup> Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be --

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator; and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business or other concern, including

Agricultural  
cooperatives

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<sup>142</sup>The following provision was deleted by § 18006(a)(2) of PL 99-272, approved April 7, 1986 (100 Stat. 366):

Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph (1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: Provided, That no loan under paragraphs (1) and (2) 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 this 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.

<sup>143</sup>New §§ 7(c)(5) and 7(c)(6) added by § 301 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

SMALL BUSINESS ACT

agricultural cooperatives,<sup>144</sup> 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 section 7(a) of this Act, 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 paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: Provided, That no loan under paragraphs 7(b)(1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed \$500,000<sup>145</sup> 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.<sup>146</sup> Employees of concerns sharing a common business premises<sup>147</sup> shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises. Provided further, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), 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).<sup>148</sup>

<sup>144</sup>The phrase "business concern" was replaced by "business or other concern, including agricultural cooperatives" by § 120(b) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999).

<sup>145</sup>Public Law 103-75, approved Aug. 12, 1993 (107 Stat. 740), provides:

[N]otwithstanding any other provisions 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 shall be increased to \$1,500,000 for disasters commencing on or after April 1, 1993.

While Congress may have intended this to be a permanent change, the language appears only in a supplemental appropriations act and does not amend the Small Business Act.

<sup>146</sup>This language, added at the end of the first proviso, erroneously stated to follow at the end of the second proviso by § 309 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Original enactment was § 237 of the Disaster Relief Act of 1970, PL 91-606, approved Dec. 31, 1970. See page 907 of this Handbook.

<sup>147</sup>Grammar as in original.

<sup>148</sup>Third proviso in § 7(c)(6) added by § 122 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3000).

SMALL BUSINESS ACT

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

(7)<sup>149</sup> The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) 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.

Nurseries.

(d)<sup>150</sup> The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.

SBDC,  
funding.

(e) [RESERVED].<sup>151</sup>

(f) [RESERVED].<sup>152</sup>

(g) [Repealed].<sup>153</sup>

(h) (1)<sup>154 155</sup>The Administration also is empowered, where other financial

Handicapped  
individ

<sup>149</sup>Section 7(c)(7) added by § 120(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999).

<sup>150</sup>Subsection 7(d) rewritten by § 5 of PL 98-395, Small Business Development Center Improvement Act of 1984, approved Aug. 21, 1984 (98 Stat. 1366). [Former § 7(d) was originally added by § 602(c) of PL 85-699, the Small Business Investment Act of 1958, approved Aug. 21, 1958 (72 Stat. 698), then rewritten by § 9 of PL 87-305, the Small Business Act Amendments of 1961, approved Sept. 26, 1961 (75 Stat. 668), and later redesignated § 7(d)(1) by § 3 of PL 95-315, the Small Business Energy Loan Act, approved July 4, 1978 (92 Stat. 378). Section 7(d)(1) was again rewritten by § 203 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833).] Paragraph 7(d)(2) was deleted by § 107(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). Text of former paragraph 7(d)(2) is reprinted below:

(2) 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.

<sup>151</sup>Section 7(e) was repealed by § 107(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). For text and legislative history of former section, please see earlier edition of this Handbook.

<sup>152</sup>Section 7(f) was repealed by § 107(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). For text and legislative history of former § 7(f), please see earlier edition of this Handbook.

<sup>153</sup>Section 7(g) on water pollution control loans repealed by § 1913(c) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357) effective Oct. 1, 1981, per § 1918 of PL 97-35. It originally had been added by § 8(a) of PL 92-500, the Federal Water Pollution Control Act amendments of 1972, approved Oct. 18, 1972 (86 Stat. 816).

SMALL BUSINESS ACT

assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate --

(A) to assist any public or private organization --

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

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

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

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed \$350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act 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.<sup>154</sup> 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.

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<sup>154</sup>The authority for making loans contemplated by this subsection was transferred to § 7(a) by § 1902(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), and now appears as § 7(a)(10). However, the existing § 7(h) inadvertently was not repealed by PL 97-35 and therefore continues to exist until further amendment.

<sup>155</sup>This section, added by § 3(b) of PL 92-595, the Small Business Investment Act Amendments of 1972, approved Oct. 27, 1972 (86 Stat. 1314), was also denominated § 7(g), apparently inadvertently. Redesignated § 7(h) by § 3(a) of PL 93-237, approved Jan. 2, 1974 (87 Stat. 1023).

<sup>156</sup>Sentence amended by § 3(2) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to clarify the rate of interest on SBA's loans to handicapped persons. Loans made in conjunction with private lenders will bear a rate of interest set by borrowers, but SBA's share of such loan shall remain 3 per centum per annum.

SMALL BUSINESS ACT

(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.

"Handicapped individual"

(i)<sup>157</sup> (1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b)<sup>158</sup> of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: Provided, however, That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed \$100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: Provided, however, That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

Limitation.

Deferred payments.

Management training program.

(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.

Private businesses, participation.

(3) To insure an equitable distribution between urban and rural areas for loans between \$3,500 and \$100,000<sup>159</sup> made under this subsection the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary.

Urban and rural areas, equitable distribution.

(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

<sup>157</sup>The authority for making loans contemplated by this subsection was transferred to § 7(a) by § 1902(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), and now appears as § 7(a)(11). However, the existing § 7(i) (added by § 2(a)(4) of PL 93-386, supra,) inadvertently was not repealed by PL 97-35 and therefore continues to exist until further amendment.

<sup>158</sup>Reference is to current § 2(c)(1), not § 2(b). Renumbered by § 112(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

<sup>159</sup> "\$100,000" substituted in lieu of "\$50,000" by § 109 of PL 94-305, approved June 4, 1976 (90 Stat. 663).

SMALL BUSINESS ACT

included in the report required by section 10(a) of this Act.

(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 --

Loan  
limitations.

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: Provided, however, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 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

[42 USC 3108].  
[42 USC 3141].

(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.

Urban area  
loan allocation

(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.

Relocations,  
funds,  
restrictions.

(j)<sup>160</sup> (1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections

Technical and  
management  
assistance.

<sup>160</sup>Added by § 2(a)(4) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to transfer similar authority from Title IV of the Economic Opportunity Act of 1964. Substantially rewritten by § 204 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

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7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to –

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of this Act;

(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, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of this Act.

Subcontract placement with businesses located in certain areas.

(A) [Repealed].<sup>161</sup>

<sup>161</sup>Section 7(j)(3)(A) repealed by § 505(h) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3887). The repealed paragraph reads:

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.

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(B) [Repealed].<sup>162</sup>

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

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

(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].<sup>163</sup>

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities Small business and capital ownership development program.

<sup>162</sup>Section 7(j)(3)(B) repealed by § 242(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827). Text of repealed paragraph:

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.

<sup>163</sup>Section 7(j)(8) repealed by § 242(2) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827). Text of repealed paragraph:

The General Accounting Office shall provide for an independent and continuing evaluation of programs under sections 7(i), 7(j) and 8(a) of this Act, 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.

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authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.<sup>164</sup>

(A) The program shall --

(i)<sup>165</sup> assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in 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.

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C)<sup>166</sup> (i) A small business concern participating in any program

Time  
limitations.

<sup>164</sup>Last sentence rewritten by § 104 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321).

<sup>165</sup>Subsection 7(j)(10)(A)(i) rewritten by § 205(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859), effective June 1, 1989, per § 208(b)(1)(A) of PL 100-656.

<sup>166</sup>Prior subsection 7(j)(10)(C) deleted by section 205(a)(1) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

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or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of--

(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)<sup>167</sup> (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<sup>168</sup> assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

Business plans.

(ii) The plans submitted under this subparagraph shall include the following:

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Section 7(j)(10)(D) added by § 203 of PL 100-656, effective June 1, 1989, per § 803 thereof and redesignated as 7(j)(10)(C) by § 205(b)(2) of PL 100-656. Deleted subsection 7(j)(10)(C), as amended by § 107 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321), provided:

No small business concern shall receive a contract pursuant to section 8(a) of this Act unless--

(i) the business plan required pursuant to section 7(j)(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.

<sup>167</sup>New paragraph 7(j)(10)(D) added by § 205(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859), effective June 1, 1989, per § 208 of PL 100-656.

<sup>168</sup>Business Opportunity Specialist capitalized as per § 5(b)(1) of PL 101-37, approved June 15, 1989 (103 Stat. 71) and defined in § 3 of the same law, see p. 1043 of this Handbook.

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(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 8(a).

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation.

(V) Estimates of contract awards pursuant to section 8(a) 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)<sup>169</sup> and section 8(a).

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a).

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include--

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the

<sup>169</sup>Reference is to § 7(j)(10)(I). In subpar. (iii), phrase beginning "relating" added by subsection 5(b)(3) of PL 101-37, approved June 15, 1989 (103 Stat. 71).

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requirements of subparagraph (I)<sup>170</sup> relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a),

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E)<sup>171</sup> A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern--

(i) voluntarily elects not to continue participation;

(ii)<sup>172</sup> completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9).

(F)<sup>173</sup> For purposes of this section and section 8(a), the term "terminated" and the term "termination" means the total denial or suspension of assistance under this paragraph or under section 8(a) prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including--

(i) the failure by such concern to maintain its eligibility for

<sup>170</sup>Phrase beginning "relating" added by subsection 5(b)(5) of PL 101-37, supra.

<sup>171</sup>Subsections 7(j)(10)(E) through (H) added by § 208 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3862), effective June 1, 1989, per § 803 of PL 100-656.

<sup>172</sup>Subsection 7(j)(10)(E)(ii) changed from "participates in the Program for a period in excess of the time limits prescribed by paragraph (15)" to current language by subsection 7(a)(1) of PL 101-37, approved June 15, 1989 (103 Stat. 72).

<sup>173</sup>First sentence of subsection 7(j)(10)(F) rewritten by subsection 7(a)(3) of PL 101-37, approved June 15, 1989 (103 Stat. 72).

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Program participation;

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);

(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

Termination  
proceeding.

(H) For the purposes of sections 7(j) and 8(a) the term "graduated" or "graduation" means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a). "Graduated."  
"Graduation."

(I)<sup>174</sup> (i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain

<sup>174</sup>Subsection 7(j)(10)(I) added by § 303(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3868), effective June 1, 1989 per § 803(b)(1)(B) thereof. This change failed to include the section designation (I), which was added by § 10(b) of PL 101-37, approved June 15, 1989 (103 Stat. 73).

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the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as "business activity targets."). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage [sic] a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

Business  
activity  
targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii).

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;<sup>175</sup>

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9).

<sup>175</sup>June 1, 1989, per § 803 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3899).

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(J)<sup>176</sup> (i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended<sup>177</sup> pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

Co-  
eligibility.

(ii) (I) Except as authorized by subclause (II) or (III), no award shall be made pursuant to section 8(a) to other than a small business concern.

(II)<sup>178</sup> 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 8(a).

(11) (A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal Assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.

Eligibility of  
participants.

(B)<sup>179</sup> (i) Except as provided in clause (iii), no individual who

<sup>176</sup>Subsection 7(j)(10)(J) added by § 206 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3861).

<sup>177</sup>Phrase "or terminated" deleted by § 6(a) of PL 101-37, approved June 15, 1989 (103 Stat. 72).

<sup>178</sup>Subsections 7(j)(10)(J)(II) and (III) added by § 204(a) of P.L. 101-574, approved Nov. 15, 1990.

<sup>179</sup>Subsections 7(j)(11)(B) through (H) added by § 201(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3856), effective June 1, 1989, per § 803(b)(1)(A) thereof. Subsection 7(j)(11)(B) rewritten by § 4(1) of PL 101-37, approved June 15, 1989 (103 Stat. 70) and effective June 1, 1989, per § 32 of PL 101-37. The text of prior subsection 7(j)(11)(B) reprinted below:

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 8(a)(4), 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 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application

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was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 8(a)(4) shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to section 7(j)(10) and section 8(a) if--

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of Minority Small Business<sup>180</sup> 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.

Division of  
Program  
Certification  
and Eligibility.

Functions.

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for certification after such effective date.

<sup>180</sup>The phrase "Office of Minority Small Business" substituted for "Office of the Associate Administrator for Minority Small Business" by § 4(2) of PL 101-37, approved June 15, 1989. Section 4(3) of PL 101-37 substituted "the Associate Administrator for Minority Small Business and Capital Ownership Development" for "such Associate Administrator."

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(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to--

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

(v) make a request for the initiation of termination or graduation proceedings, as appropriate, to<sup>181</sup> the Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi)<sup>182</sup> 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)<sup>183</sup> decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

<sup>181</sup>"to" substituted for "with" by § 4(4) of PL 101-37, *infra*.

<sup>182</sup>Subsection 7(j)(11)(F)(vi) rewritten by § 4(5) of PL 101-37, *supra*. Text of former subsection 7(j)(11)(F)(vii) reads: "... decide protests from applicants that have been denied program admission."

<sup>183</sup>Section 221 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 999), provides:

(a) A decision issued pursuant to section 7(j)(11)(F)(vii) of the Small Business Act 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) 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 shall not have value as precedent in deciding any subsequent protest until such time as the decision is published in full text.

(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)<sup>184</sup> 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.

Application  
review.

(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

<sup>184</sup>Subsection 7(j)(11)(H) renumbered as 7(j)(11)(I) and new subsection 7(j)(11)(H) added by section 4(9) of PL 101-37, supra.

SMALL BUSINESS ACT

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)<sup>185</sup> (A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental<sup>186</sup> stage; and a transitional stage.

Program stages.  
Developmental 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.

Transitional stage.

(13)<sup>187</sup> A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

Assistance available.

(A) Contract support pursuant to section 8(a).

(B) Financial assistance pursuant to section 7(a)(20).

(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled "An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section 8(a) 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.

<sup>185</sup>Subsection 7(j)(12) added by § 301(a) of PL 100-656, supra.

<sup>186</sup>In subsection 7(j)(12)(A), "developmental" substituted for "development" by § 8(a)(1) of PL 101-37, approved June 15, 1989 (103 Stat. 72). In subsection 7(j)(12)(B), "in its effort" added by § 8(a)(2) of PL 101-37, supra.

<sup>187</sup>Subsection 7(j)(13) added by § 301(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3865), effective October 1, 1989, per § 803(b)(3)(D) thereof.

SMALL BUSINESS ACT

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

Miller Act  
exemptions.

(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.<sup>188</sup>

(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.<sup>189</sup> Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term "training provider" shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act (29 U.S.C. 1501 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--

Training  
assistance.

<sup>188</sup>Expiration date changed from Oct. 1, 1992, to Oct. 1, 1994, by § 206 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2820).

<sup>189</sup>Second sentence of subsection 7(j)(13)(E) replaced by current second and third sentences by § 8(b) of PL 101-37, approved June 15, 1989 (103 Stat. 72). Prior text read:

Such financial assistance may be made without regard to section 18(a), 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.

SMALL BUSINESS ACT

(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.

Transfer of  
technology or  
surplus  
property.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability

SMALL BUSINESS ACT

to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follow 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.

Joint ventures.

(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)<sup>190</sup> 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)<sup>191</sup> Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) 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--

Developmental assistance term.

(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)<sup>192</sup> (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).

Data collection.

(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:

Report to Congress.

<sup>190</sup>Section 7(j)(14) added by § 301(c) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3867), effective June 1, 1989, per § 803(b)(1)(B) thereof.

<sup>191</sup>New § 7(j)(15) added by § 202 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3858).

<sup>192</sup>Section 7(j)(16) added by § 408 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3877).

SMALL BUSINESS ACT

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year, and (II) of firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

(k)<sup>193</sup> In carrying out its functions under subsections 7(i), 7(j) and 8(a)<sup>194</sup> of this Act, the Administration is authorized--

Adminis-  
tration,  
functions.

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

Gift  
acceptance.

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)); and

Accept  
voluntary  
service.  
[31 USC  
665(B)].

(4) to employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code,<sup>195</sup> including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5 of such Act (5 U.S.C. 73b-2) for persons in the Government service employed intermittently, while so employed: Provided, however, that contracts for such employment may be renewed annually.

(l) [RESERVED].<sup>196</sup>

(m)<sup>197</sup> MICROLOAN PROGRAM

Microloan  
program.  
15 USC 636(m).

<sup>193</sup> Added by § 2(a)(4) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to transfer similar authority from § 602 of the Economic Opportunity Act of 1964.

<sup>194</sup> Reference to "8(a)" added by § 205 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

<sup>195</sup> The clause "the daily equivalent . . . United States Code" was added by § 104 of PL 95-510, approved Oct. 24, 1978 (92 Stat. 1780), effective Oct. 1, 1979.

<sup>196</sup> Subsection 7(l) was repealed by § 107(d) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). For text and legislative history of former subsection 7(l), please see previous edition of this Handbook.

<sup>197</sup> Section 7(m) added by § 609(h) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 827). Section 609(i) of PL 102-140 provides: "Not later than 90 days after the date of the enactment of this Act, the Small Business Administration shall promulgate interim final regulations to implement the microloan demonstration program." Section 203 of PL 103-403, approved Oct. 22, 1994 (108 Stat. 4181) provides: "The demonstration program established by subsection (h) shall terminate on October 1, 1997." Section 201(c)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598), removed the

## (1) (A) PURPOSES. The purposes of the Microloan Program are-

(i)<sup>198</sup> to assist women, low-income, veteran (within the meaning of such term under section 3(q)),<sup>199</sup> and minority entrepreneurs and business owners, and other such individuals possessing the capability to operate successful business concerns; and

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

(iii) to establish a microloan program to be administered by the Small Business Administration--

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than \$7,500,<sup>200</sup> 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; and

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word "Demonstration" throughout this subsection. Subsection 201(c)(4) of the same Public Law authorized the program through fiscal year 2000.

<sup>198</sup> Paragraph 7(m)(1)(A)(i) rewritten slightly by § 113(a)(1)(A) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 989). Section 114 of PL 102-366 provides that "[N]ot later than 45 days after the date of enactment of this Act, the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this subtitle."

<sup>199</sup> The reference to veterans was added by § 403 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

<sup>200</sup> The clause within the commas added by § 113(a)(1)(B) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 989).

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(iv)<sup>201</sup> 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

Welfare-to-work initiative.

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<sup>201</sup>New clause 7(m)(1)(A)(iv) added by § 202(a)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598).

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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 \$25,000<sup>201</sup> 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--

Eligibility.

(A) meets the definition in paragraph (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.--

Loans to intermediaries.

(A) INTERMEDIARY APPLICATIONS.

<sup>201</sup>Amount changed from \$15,000 by § 8(1) of P.L. 103-81, approved August 13, 1993 (107 Stat. 782).

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(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 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)<sup>202</sup> 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 small business concerns.

(ii)<sup>203</sup> **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 \$7,500.

(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. intermediary contribution.

(C) **LOAN LIMITS.** Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed \$750,000 in the first year of Loan limits.

<sup>202</sup>Subclause rewritten to include references to SCORE and small business development centers by § 113(a)(2)(D) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 990).

<sup>203</sup>This subparagraph added by § 113(a)(2)(E) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 990).

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such intermediary's participation in the program, and \$3,500,000<sup>204</sup> in the remaining years of the intermediary's participation in the program.

(D)<sup>205</sup> (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.

Loan loss  
reserve fund.

(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, 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.

<sup>204</sup>Amount changed from \$2,500,000 by § 201(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2597). Amount changed from \$1,250,000 to \$2,500,000 by § 206 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181).

<sup>205</sup>Subparagraph 7(m)(3)(D) rewritten by § 3 of P.L. 106-22, approved April 27, 1999 (113 Stat. 36). Text of former subparagraph 7(m)(3)(D) is reprinted below:

**LOAN LOSS RESERVE FUND.** 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.

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(IV) REQUIREMENTS.—The Administrator may reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that—

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administration under this subsection.

(E) UNAVAILABILITY OF COMPARABLE CREDIT. An intermediary may make a loan under this subsection of more than \$15,000 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 \$25,000, or have outstanding or committed to any 1 borrower more than \$25,000.

(F)<sup>206</sup> LOAN DURATION; INTEREST RATES.—

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

Loan duration.

(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.

Interest rates.

(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 loanmaking site or office of 1 intermediary only if such site or office meets the requirements of that clause.

<sup>206</sup>This paragraph was rewritten, adding subparagraphs (ii) through (vii) by § 113(a)(3) of PL 102-366, approved Sept. 4, 1990 (106 Stat. 990).

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

(vii)[sic] **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.

Fees.

(4)<sup>207</sup> **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:

Grants to intermediaries.

(A) **GRANT AMOUNTS.** Except as otherwise provided in subparagraph (C) and subject to<sup>208</sup> 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.<sup>209</sup> Except as provided in subparagraph (C), each

<sup>207</sup>The changes made to this paragraph by PL 102-366 are to be effective on October 1, 1992, per § 113(b) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 993).

<sup>208</sup>First sentence was amended to include the reference to subparagraph (C) by § 113(a)(4)(A) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991).

<sup>209</sup>The last two sentences of subparagraph (A) were deleted and a new sentence added by § 113(a)(4)(B) of PL 102-366. The text of the deleted sentences follows:

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.

SMALL BUSINESS ACT

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), 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,<sup>210</sup> the Administration shall require the intermediary to contribute an amount equal to 25 percent<sup>211</sup> 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)<sup>212</sup> ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.-- Grants.

(i)<sup>213</sup> IN GENERAL.--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.

(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.

<sup>210</sup>Phrase beginning "except for" added by § 208(a)(1) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181). For a definition of "economically distressed area," see § 7(m)(11)(D). Section 208(c) of P.L. 103-403 provides that "[t]he amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act and ending on October 1, 1997."

<sup>211</sup>Amount changed from one-half to 25 percent by § 113(4)(C) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991).

<sup>212</sup>Subparagraphs (C) and (D) added by § 113(a)(4)(D) of PL 102-366.

<sup>213</sup>Clause 7(m)(4)(C)(i) rewritten by § 208(a)(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). For a definition of "economically distressed area," see § 7(m)(11)(D). Section 208(c) of P.L. 103-403 provides "[t]he amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act and ending on October 1, 1997." Text of former clause 7(m)(4)(C)(i) is reprinted below:

Each intermediary that meets the requirements of subparagraph (C) and that 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 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).

(iii) CONTRIBUTION EXCEPTION.-- The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

(D) ELIGIBILITY FOR MULTIPLE SITES OR OFFICES.-- The eligibility for a grant described in subparagraph (A) or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

Eligibility for multiple sites.

(E)<sup>214</sup> ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

(i) IN GENERAL - Each intermediary may expend an amount not to exceed 25<sup>215</sup> 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)<sup>216</sup> 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

<sup>214</sup>Subparagraph 7(m)(4)(E) added by § 207 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181).

<sup>215</sup>Percentage amount changed from 15 by § 201(d)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598). Section 201(d)(1)(C) of the same Public Law added new clause (ii).

<sup>216</sup> New subparagraph 7(m)(4)(F) was added by § 202(a)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2599). Section 202(b) of P.L. 105-135 provides:

(b) TRANSFER OF FUNDS—

(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.

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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. 9958 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

(iv) **MEMORANDUM OF UNDERSTANDING** - Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure compliance with this subparagraph by those grantees and recipients of assistance.

(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:

Grants.

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(A) GRANT AMOUNTS. Subject to the requirements of subparagraph (B),<sup>217</sup> the Administration may make not more than 25<sup>218</sup> grants annually, each in amounts not to exceed \$125,000 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.—

Loans from  
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 \$10,000.

(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<sup>219</sup> not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

Interest  
limit.

(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

<sup>217</sup> Phrase "in each of the 5 years of the demonstration program established under this subsection" by § 201(d)(2)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598). Section 201(2)(2)(B) of the same Public Law deleted the phrase "for terms of up to 5 years" and replaced it with "annually."

<sup>218</sup> The number of grants allowed was changed from 2 to 6 by § 113(a)(5) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991). The change is to be effective on Oct. 1, 1992, per § 113(b) of PL 102-366. The number of grants was changed again to 25 and the term of 5 years was added by § 8(2) of P.L. 103-81, approved August 13, 1993 (107 Stat. 782).

<sup>219</sup> Interest limit was rewritten by § 113(a)(6) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991), which added paragraphs 7(m)(6)(C)(i) and (ii). Formerly, the interest limit was "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."

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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)<sup>220</sup> ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESS - In addition to other eligible small businesses concerns [sic], 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 business providing for-profit transportation services.

Program  
funding.

(7) PROGRAM FUNDING FOR MICROLOANS<sup>221</sup>.--

(A) NUMBER OF PARTICIPANTS.--During the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 200 microloan programs.

(B)<sup>222</sup> ALLOCATION.--

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<sup>220</sup> New paragraph 7(m)(6)(E) added by § 202(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

<sup>221</sup>Section 7(m)(7) rewritten by § 204 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181). Text of former § 7(m)(7) is reprinted below:

(A) FIRST YEAR PROGRAMS. In the first year of the demonstration program, the Administration is authorized to fund, on a competitive basis, not more than 60 microloan programs, including not less than 1 program to be located in each of the following States: Arkansas, Illinois, Iowa, Kentucky, Maine, Minnesota, New Hampshire, New York, North Carolina, Pennsylvania, South Carolina, and Wisconsin. 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.

(B) EXPANDED PROGRAMS. In addition to any microloan programs authorized to be funded in fiscal year 1993 in accordance with subparagraph (A), in the second year of the demonstration program, the Administration is authorized to fund up to 50 additional microloan programs.

(C) STATE LIMITATIONS. In no case shall a State-

- (i) be awarded more than 4 microloan programs in the first 2 years of the demonstration program nor more than 2 microloan programs in any year thereafter;
- (ii) receive more than \$1,500,000 to fund such programs in such State's first year of participation; or
- (iii) receive more than \$2,500,000 to fund such programs in any succeeding year of such State's participation.

<sup>222</sup> Subparagraph 7(m)(7)(B) was rewritten by § 2(1) of P.L. 106-22, approved April 27, 1999 (113 Stat. 39). Text of former subparagraph 7(m)(7)(B) is reprinted below:

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(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)<sup>223</sup> **EQUITABLE DISTRIBUTION OF INTERMEDIARIES.**—In approving microloan program applicants and providing funding to intermediaries<sup>224</sup> 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.

Equitable  
distribution of  
intermediaries.

Grants for  
technical  
assistance.

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**STATE LIMITATIONS.**—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.

<sup>223</sup>Section 7(m)(8) rewritten by § 205 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181). Former text of § 7(m)(8) is reprinted below:

**RURAL ASSISTANCE.** 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.

<sup>224</sup>Phrases "and providing funding to intermediaries" and "and provide funding" were added by § 2(2) of P.L. 106-22, approved April 27, 1999 (113 Stat. 39).

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(9)<sup>225</sup> 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 practice necessary to operate successful microloan programs.

(B) ASSISTANCE AMOUNT.— The Administration shall transfer 7<sup>226</sup> percent of its annual appropriation for loans and loan guarantees<sup>227</sup> 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<sup>228</sup> to achieve the purpose set forth in subparagraph (A).

(C)<sup>229</sup> WELFARE-TO-WORK - 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.

Welfare-to-work.

(10) REPORT TO CONGRESS. On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3 1/2 years of the microloan program and the following:

Report to Congress.

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

<sup>225</sup>New paragraph (9) added by § 113(a)(9) of PL 102-366 and former paragraphs (9) and (10) redesignated as (10) and (11) by § 113(a)(8) of PL 102-366. Paragraph heading changed by § 202(a)(4)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

<sup>226</sup>Amount changed from 3 percent by § 8(3) of P.L. 103-81, approved August 13, 1993 (107 Stat. 782).

<sup>227</sup>Reference to loan guarantees added by § 604(1) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

<sup>228</sup>Reference to national and regional nonprofit organizations added by § 604(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

<sup>229</sup>New subparagraph 7(m)(9)(C) added by § 202(a)(4)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

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- (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 "Intermediary."
  - (i) a private, nonprofit entity;
  - (ii) a private<sup>230</sup> nonprofit community development corporation;
  - (iii)<sup>231</sup> 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)<sup>232</sup> an agency of or nonprofit entity established by a Native American Tribal Government,

<sup>230</sup>The term "private" was added by § 307(c) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4264).

<sup>231</sup>Subsection 7(m)(11)(A) was rewritten, including addition of subparagraphs (iii) and (iv), by § 113(a)(10)(A) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 992).

<sup>232</sup>Clause 7(m)(11)(A)(v) added by § 202 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4180).

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that seeks to borrow or has borrowed funds from the Small Business 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 \$25,000, made by an intermediary to a startup, newly established, or growing small business concern;

"Microloan."

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

"Rural area."

(i) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or

(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural; and

(D)<sup>233</sup> 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.

"Economically distressed area."

(12)<sup>234</sup> DEFERRED PARTICIPATION LOAN PILOT.--In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1995 through 1997, 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:

Deferred participation loan pilot.

(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.

<sup>233</sup>Subparagraph 7(m)(11)(D) added by § 208(b)(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). Subsection 208(c) provides that "[t]he amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act and ending on October 1, 1997."

<sup>234</sup>Paragraph 7(m)(12) added by § 201 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4180).

(C) **INTEREST RATE.**—The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

(13)<sup>235</sup> **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).

Evaluation;  
report to  
Congress.

(n)<sup>236</sup> **REPAYMENT DEFERRED FOR ACTIVE DUTY RESERVISTS.**—

Repayment  
deferral 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.

“Eligible  
reservist.”

(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.

“Essential  
employee.”

(C) **PERIOD OF MILITARY CONFLICT.**—The term “period of military conflict” means—

“Period of  
military  
conflict.”

(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, United States Code.

(D) **QUALIFIED BORROWER.**—The term “qualified borrower” means—

“Qualified  
borrower.”

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

(ii) a small business concern that received a direct loan under subsection (a) or (b) before an eligible reservist, who is an essential employee, was ordered to active duty.

<sup>235</sup> Paragraph 7(m)(13) added by § 202(a)(5) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

<sup>236</sup> New subsection 7(n) added by § 402(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 244).

## (2) DEFERRAL OF DIRECT LOANS.—

Deferral  
direct

(A) IN GENERAL.—The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b), if such loan was incurred by a qualified borrower.

(B) PERIOD OF DEFERRAL.—The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active 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—

Deferral of  
loan  
guarantees.

(A) encourage intermediaries participating in the program under subsection (m) to defer repayment of a loan made with proceeds made available under that subsection, if such loan was incurred by a small business concern that is eligible to apply for assistance under subsection (b)(3); and

(B) not later than 30 days after the date of the enactment of this subsection, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) and financings under section 504 of the Small Business Investment Act of 1958 that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3), and loan guarantees provided under subsection (m) if the intermediary provides relief to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of repayment or other relief to any intermediary providing relief to a small business borrower under this paragraph.

§ 8. (a) (1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate --

SBA's  
additional  
powers.  
15 USC 637.

(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

## SMALL BUSINESS ACT

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.<sup>237</sup> 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;<sup>238</sup>

(B)<sup>239</sup> to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically

<sup>237</sup>Sentences from "Not later than 5 days" to last sentence of paragraph added by § 303(d) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3870).

<sup>238</sup>Last clause added by § 921(b)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

<sup>239</sup>Former § 8(a)(1)(B) deleted by § 207(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2820). Former § 8(a)(1)(C) renumbered as § 8(a)(1)(B) and new § 8(a)(1)(C) added by sections 207(3) and (4) of P.L. 101-574, respectively. Former § 8(a)(1)(B) read:

(B) 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.

(Rev. 9, Change 1)

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 7(j)(15), 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<sup>240</sup>

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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

\* Before enactment of PL 99-567, approved Oct. 27, 1986 (100 Stat. 3188), former § 8(a)(1)(B) made an exception for the Department of Defense.

<sup>240</sup>Sentence deleted by § 207(2) of P.L. 101-574 reads: "No contract may be entered into under subparagraph (B) after September 30, 1988."

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(D)<sup>240</sup> (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 authorized 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) 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 works," approved August 24, 1935 (49 Stat. 793), 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 --

Performance  
bonds.

[49 Stat. 793]

(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 such

Surety bond  
guarantee.  
[15 USC 694a].

<sup>240</sup>Section 8(a)(1)(D) added by § 303(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3869).

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bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

(D) the small business is determined to be a startup 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.<sup>241</sup>

(3) (A)<sup>242</sup> 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).

"Fair market price."

(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).

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<sup>241</sup>Program extended to Sept. 30, 1988, by § 3 of PL 99-567, approved Oct. 27, 1986 (100 Stat. 3188), no further extensions enacted. See § 7(j)(13) of the Act.

<sup>242</sup>Section 8(a)(3)(A) rewritten and paragraphs 8(a)(3)(B) through (D) added by § 303(e) of PL 100-656, approved Nov. 1988 (102 Stat. 3870).

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(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 protect 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 --

"Socially and economically disadvantaged small business concern."

(i) which is at least 51 per centum unconditionally<sup>243</sup> 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),<sup>244</sup> 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 concern are controlled by one or more --

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I), or

<sup>243</sup>Term "unconditionally" in subsections 8(a)(4)(A)(i) and (ii) added by subsections 6(c)(1) and (2) of PL 101-37, approved June 15, 1989 (103 Stat. 72), respectively.

<sup>244</sup>Phrase "or wholly owned business entity of such tribe" in subsections 8(a)(4)(A)(i)(II) and 8(a)(4)(A)(ii)(II) added by § 204(b)(1) and (2), respectively, of P.L. 101-574 (104 Stat. 2819), approved Nov. 15, 1990.

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(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II)<sup>245</sup> or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).<sup>246</sup>

(C)<sup>247</sup> 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. Socially disadvantaged individual.

(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.<sup>248</sup> Economically disadvantaged individual.

(B)<sup>249</sup> 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

<sup>245</sup>Section 8(a)(4) rewritten by § 18015 of PL 99-272, approved April 7, 1986 (100 Stat. 370), to add "an economically disadvantaged Indian tribe" and its members to the definition of "socially and economically disadvantaged small business concern." For definition of Indian tribe, see § 8(a)(13).

<sup>246</sup>Section 8(a)(4) rewritten again to add "an economically disadvantaged Native Hawaiian organization" to the definition of "socially and economically disadvantaged small business concern" by § 207(c) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3861). For definition of Native Hawaiian organization see § 8(a)(15).

<sup>247</sup>Section 8(a)(4)(C) added by § 209(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3864).

<sup>248</sup>Last sentence added by § 8015(c) of PL 99-272, approved April 7, 1986 (100 Stat. 371).

<sup>249</sup>Paragraphs 8(a)(6)(B) through (E) added by § 209(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3863), effective October 1, 1989, per § 803 thereof.

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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.

Review.

(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 7(j)(10)(G) 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.

Withdrawal  
of assets.

(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 7(j)(10)(F), 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--

Exclusions  
from net  
worth.

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph

SMALL BUSINESS ACT

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.<sup>250</sup>

Reasonable prospects for success.

(B)<sup>251</sup> 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.

Logical business progression.

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<sup>250</sup>Section 203 of P.L. 101-574, approved Nov. 15, 1990, provides:

(a) 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) (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, 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, 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.

<sup>251</sup>Section 8(a)(7)(B) added by § 303(g) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3872).

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(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.<sup>252</sup> Prejudice or bias determination.

(9)<sup>253</sup> (A) Subject to the provisions of subparagraph (E), the Administration<sup>254</sup>, 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, United States Code. Procedural due process.

(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 7(j)(10)(F);
- (iii) a graduation pursuant to section 7(j)(10)(G)<sup>255</sup>; and
- (iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's<sup>256</sup> 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--

<sup>252</sup>Section 8(a)(8) rewritten by § 105 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321).

<sup>253</sup>Section 8(a)(9) rewritten by § 409 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3878), to spell out the procedural due process requirements for a denial of assistance.

<sup>254</sup>"Administration" substituted for "Administrator" by § 17(1) of PL 101-37, approved June 15, 1989 (103 Stat. 74).

<sup>255</sup>Reference to "section 7(j)(10)(G)" changed from "section 7(j)(10)(H)" by § 17(2) of PL 101-37, supra.

<sup>256</sup>"Administration's" substituted for "Administrator's" by § 17(3) of PL 101-37, supra.

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- (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 Outreach. 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.<sup>257</sup>

(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)<sup>258</sup>(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.

Capability  
statements.

<sup>257</sup>Last sentence in § 8(a)(10) added by § 201(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3858).

<sup>258</sup>Section 8(a)(12) rewritten by § 501 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3880), effective October 1, 1988 per § 803(b)(3)(C) thereof. For prior text, see § 202(a) of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

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(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:

Contract opportunities forecast.

(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 15(k) 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)<sup>259</sup> For purposes of this subsection, the term "Indian tribe" means any "Indian tribe."

<sup>259</sup>New § 8(a)(13) added by § 18015(d) of PL 99-272, approved April 7, 1986 (100 Stat. 371). For definition of "Qualified Indian Tribe" under § 7, see § 3(d).

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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) 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)<sup>260</sup> (A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that --

Composition  
of labor force.

(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 15(o).

(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 15(o) for the same industry category.<sup>261</sup>

<sup>260</sup>New § 8(a)(14) added by § 921(c)(1) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

<sup>261</sup>Reference to section 15(o) at end of paragraphs (B) and (C) substituted for reference to section 15(n) by section 10(b)(3) of PL 100-26, approved April 21, 1987 (101 Stat. 273).

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(15)<sup>262</sup> For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which--

"Native Hawaiian Organization."

- Hawaii, (A) is a not-for-profit organization chartered by the State of
- (B) is controlled by Native Hawaiians, and
- Hawaiians. (C) whose business activities will principally benefit such Native

(16)<sup>263</sup> (A) The Administration shall award sole source contracts under this

Self-marketing.

<sup>262</sup>Section 8(a)(15) added by § 207(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3861). Section 6(b) of PL 101-37, approved June 15, 1989 (103 Stat. 72) changed "organizations" to "Organization."

<sup>263</sup>Section 8(a)(16) added by § 303(c) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3870). Section 602 of PL 100-656 (102 Stat. 3887) provides:

- (a) Section 8(a)(16)...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.
- (b) The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act 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; and
  - (2) such Program Participant:
    - (A) owns 51 per centum or more of such joint venture;
    - (B) is located on the reservation of such tribe;
    - (C) performs most of its activities on such reservation; and
    - (D) employs members of such tribe for at least 50 per centum of its total workforce.
- (c) A Program Participant, as a party to a joint venture shall receive no more than two contracts due solely to the provisions of subsection (b).
- (d) The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this section if--
  - (1) 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

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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 7(j)(10)(I).

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)<sup>264</sup> (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 15 solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

Non-manufacturer.

(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)<sup>265</sup> 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) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such

(2) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(e) Subsection (b) shall cease to be effective after September 30, 1994. [Sunset date changed from 1991 to 1994 by § 205(2) of PL 101-574, approved Nov. 15, 1990 (104 Stat. 2820)].

<sup>264</sup>Section 8(a)(17) added by § 303(h) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3872).

<sup>265</sup>New subsection 8(a)(17)(B)(ii) added and existing subsections renumbered by § 10(e) of PL 101-37, approved June 15, 1989 (103 Stat. 73).

*changed to  
1997 by PL 105-403*

SMALL BUSINESS ACT

section by section 7(j)(13)(C); and

(iv)<sup>266</sup> 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)<sup>267</sup> (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<sup>268</sup> 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 7(j)(10), or section 7(a)(20).

SBA  
employees,  
prohibited  
actions.

(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

(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 ..

<sup>266</sup>Subsection 8(a)(17)(B)(iv) rewritten by § 210 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821).

<sup>267</sup>Section 8(a)(18) added by § 402 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3873).

<sup>268</sup>Term "certified" deleted by § 12 of PL 101-37, approved June 15, 1989 (103 Stat. 73), to make clear that the prohibition applies to anyone who was a Program Participant during such employee's employment at SBA.

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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 7(j)(10); 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 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)<sup>269</sup>(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 7(j), 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 solicited or directed.

Political  
actions  
prohibited

Inspector  
General  
referral.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action<sup>270</sup> which may consist of separation from service, reduction in grade, suspension, or reprimand.

<sup>269</sup>Section 8(a)(19) added by § 403 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3874).

<sup>270</sup>Phrase "imposed by the Administrator" deleted by § 13 of PL 101-37, approved June 15, 1989 (103 Stat. 73).

(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)<sup>271</sup> (A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semianually report to their assigned Business Opportunity Specialist the following:

Reports.

(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.

Inspector  
General  
referral.

(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 7(j)(10)(F).

(21)<sup>272</sup> (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.

Contract  
performance

<sup>271</sup>Section 8(a)(20) added by § 404 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3874).

<sup>272</sup>Section 8(a)(21) added by § 407 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3876), effective with respect to contracts entered into on or after June 1, 1989, per § 803(b)(2) of PL 100-656.

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(B)<sup>273</sup> 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);

(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

(III) the disadvantaged owners will maintain control of daily business operations.

(C)<sup>274</sup> 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

<sup>273</sup>Subsection 8(a)(21)(B) rewritten by § 16(1) of PL 101-37, approved June 15, 1989 (103 Stat. 74).

<sup>274</sup>New subsection 8(a)(21)(C) added and existing subsections 8(a)(21)(C) and (D) renumbered as 8(a)(21)(D) and (E), respectively, by § 16(2) of PL 101-37, approved June 15, 1989 (103 Stat. 74). References to subparagraphs (B)(iii) and in subparagraph (C)(i) and (ii) erroneously reversed.

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 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary --

(1)<sup>275</sup> (A) 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,<sup>276</sup> by disseminating such information, and by such other activities as are deemed appropriate by the Administration.<sup>277</sup> Such assistance also may be provided to small business concerns by

Cospon-  
sorship.

<sup>275</sup> Section 8(b)(1) redesignated as § 8(b)(1)(A) by § 1017 of PL 89-754, the Demonstration Cities and Metropolitan Development Act of 1966, approved Nov. 3, 1966 (80 Stat. 1255), which also added the substance of subpar. (C) below as subpar. (B).

<sup>276</sup> The reference to franchising was added by § 407 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192).

<sup>277</sup> The words "computer security" and the sentences beginning with "[S]uch assistance also may be provided . . ." and ending the paragraph with ". . . services of the cosponsor" added by § 5(a) of PL 98-362, approved July 16, 1984 (98 Stat. 431). That sentence is repealed on September 30, 1997, per § 401(a) of PL 103-403, approved Oct. 22, 1994 (108 Stat. 4190). Section 5(b) of PL 98-362 provides:

(b) Not later than December 1, 1987 the Small Business Administration shall report to the Committees on Small Business of the Senate and the United States House of Representatives on the impact of the assistance provided in cooperation with profitmaking concerns pursuant to the amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984. The report shall include information on benefits provided to small business concerns assisted by the Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns."

Subsection 7(b) of PL 98-362 provided that the amendments to subparagraph 8(b)(1)(A) would be repealed effective Oct. 1, 1988. Subsection 131(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3004), changes the date of repeal to Oct. 1, 1990. Section 7(b) of PL 98-362 provides further: "Nothing in this section shall preclude the Administrator

## SMALL BUSINESS ACT

the Administration through cooperation with a profit-making concern (hereafter in this paragraph referred to as a "cosponsor") to provide training: Provided, That the Administration shall take such actions as it deems appropriate to ensure that any Administration program participating in such cosponsored activities receives appropriate recognition and publicity,<sup>278</sup> and that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor, to avoid unnecessary promotion of the products or services of the cosponsor, and to minimize utilization of any one cosponsor in a marketing area. Such actions shall include, but not be limited to: (i) developing an agreement, 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,<sup>279</sup> which specifies the standard terms and conditions of the cooperation, the use of which shall be mandatory; (ii) prohibiting any fee or charge from being imposed upon any small business concern for receiving assistance in excess of a minimal amount to cover the direct costs of providing such assistance; (iii) prohibiting the release to the cosponsor of any of the Administration's lists of names and addresses of small business concerns; and (iv) requiring that all printed materials which contain the names of both the Administration and the cosponsor include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor. 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.<sup>280</sup>

(B)<sup>281</sup> 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

Volunteer programs.

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from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act."

<sup>278</sup>This clause in the proviso added by § 131(b)(1) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3004).

<sup>279</sup>The phrase beginning with "executed" and ending with "conference" in § 8(b)(1)(A)(i) added by section 131(b)(3) of PL 100-590.

<sup>280</sup>The last sentence of section 8(b)(1)(A) added by § 131(b)(2) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3004). As originally written, the sentence required SBA to receive "primary recognition". Changed to "appropriate recognition" by § (3) of PL 101-162, approved Nov. 21, 1989 (103 Stat. 1025). That same section added "public" before "official" at the end of the sentence.

<sup>281</sup>Section 8(b)(1)(B) - (F) were added by § 101 of PL 95-510, approved Oct. 24, 1978 (92 Stat. 1780), effective Oct. 1, 1979. For prior history of this section, see § 1017 of PL 89-754, the Demonstration Cities and Metropolitan Development Act of 1966, approved Nov. 3, 1966 (80 Stat. 1255); § 105 of PL 90-104, the Small Business Act Amendments of 1967, approved Oct. 11, 1967 (81 Stat. 268); and § 302(e) of PL 93-113, the Domestic Volunteer Service Act of 1973, approved Oct. 1, 1973 (87 Stat. 394). For PL 93-113, see page 911 of this Handbook.

## SMALL BUSINESS ACT

(SCORE)<sup>282</sup> and an Active Corps of Executive (sic) (ACE) for the purposes of section 8(b)(1)(A) of this Act; and to

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<sup>282</sup> Section 301(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 242), provides:

(a) **IN GENERAL.**—The Administrator of the Small Business Administration shall enter into a memorandum of understanding with the Service Core [sic] 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 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).

SMALL BUSINESS ACT

facilitate the implementation of such volunteer programs the Administration 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 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.

(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 section 8(b)(1) of this Act shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (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, United States Code, 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;

[5 USC 8101

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this Act, 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, United States Code, for individuals serving without pay; and

Volunteer  
reimbursement

[5 USC 5703].

(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 section 8(b)(1) of this Act 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)<sup>282</sup> In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of

Small  
business  
institute.

<sup>282</sup>Subparagraphs 8(b)(1)(E) and (F) redesignated as (F) and (G) and new subparagraph (E) added by § 304 of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4262).

SMALL BUSINESS ACT

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 section 8(b)(1) of this Act, as amended (15 U.S.C. 637(b)(1)) to which volunteers have been made parties.

Defense  
proceedings,  
expenses.

(G) In carrying out its functions under this Act and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988 the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; 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 more 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 Act. 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 criteria expressed in this Act. 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,

Certify concern  
as small.

SMALL BUSINESS ACT

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.

Certificate of  
competency.

(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) of title 41, United States Code (the Walsh-Healey Public Contracts Act), 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.

[41 USC 35(a)]

(C)<sup>263</sup> 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

<sup>263</sup>Section 501 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553), amended paragraph (7) of § 8(b) to expand the certificate of competency program to include within SBA jurisdiction final determination of all elements of eligibility and responsibility. Section 401 of PL 98-577, approved Oct. 30, 1984, Small Business and Federal Procurement Competition Enhancement Act of 1984 (98 Stat. 3066), added the sentence beginning "Notwithstanding the first sentence . . ." to the end of this paragraph.

SMALL BUSINESS ACT

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 Act;

(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 Act;

(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 Act and of the Small Business Investment Act of 1958; 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, United States Code, 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 meetings 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;<sup>284</sup>

Establish  
Advisory  
Board.

[5 USC 5703].

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 7(b)(3), to local public agencies (as defined in section 110(h) of the Housing Act of 1949) 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;<sup>285</sup>

<sup>284</sup> Authority to establish advisory boards for the purpose of the Small Business Investment Act of 1958, as amended, and to pay expenses, per diem, and rent accommodations in connection with advisory board activities added by § 106 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

<sup>285</sup> Paragraph 14 of § 8(b) added by § 305(c) of PL 88-560, the Housing Act of 1964, approved Sept. 2, 1964 (78 Stat. 78).

SMALL BUSINESS ACT

(15)<sup>286</sup> to disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

Information  
dissemination.  
[39 USC 3204

(16)<sup>287</sup> 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)<sup>288</sup> 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, United States Code).

(c)<sup>289</sup> [Reserved].

<sup>286</sup>Paragraph 15 of § 8(b) added by § 107 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

<sup>287</sup>Section 8(b)(16) added by § 202 of PL 100-533, approved Oct. 25, 1988 (102 Stat. 2692). Text of new § 8(b)(16) incorporates former § 8(c), which was rewritten by § 201 of PL 100-533. The same language was also included in § 127(b) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3003). Section 127(c) of PL 100-590 provides that:

There is authorized to be appropriated \$10,000,000 to carry out the demonstration projects required pursuant to subsection (a). The initial projects authorized to be financed by 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.

Section 127(e) of PL 100-590 adds:

New spending authority or authority to enter into contracts as authorized in this section shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

Section 127(d) of PL 100-590 provides that:

For the purposes of 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.

<sup>288</sup> New paragraph 8(b)(17) added by § 708(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2637).

<sup>289</sup>Section 8(c) was rewritten by § 201 of PL 100-533, approved Oct. 25, 1988 (102 Stat. 2691) and text of former § 8(c) was moved to § 8(b)(16). Section 8(c) repealed by § 3 of PL 102-191, approved Dec. 5, 1991 (105 Stat. 1591). Section 3 of PL 102-191 provides: "Projects funded pursuant to the provisions of former subsection (c) shall be deemed to be funded under and shall be treated as if funded under section 28 [see § 28(2)] of the Small Business Act." The same section of PL 102-191

## SMALL BUSINESS ACT

renumbered the remaining subsections in § 8 as "subsections (c) through (k)" when the correct numbering should be "subsections (c) through (i)." The numbering of these subsections was corrected by § 232(a)(6) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1001). Text of former § 8(c):

- (1) Subject to the requirements of paragraph (2), the Administration shall provide financial assistance to private organizations to conduct demonstration projects for the benefit of small business concerns owned and controlled by women.
- (2) No amount of financial assistance shall be provided pursuant to this subsection unless the recipient organization agrees, as a condition of receiving such assistance, that--
  - (A) it will obtain, after its application has been approved but prior to the disbursement of funds pursuant to this subsection, cash contributions from private sector sources in an amount at least equal to the amount of funds such organization will receive under this subsection; and
  - (B) it will provide the types of services and assistance to present and potential women owners of small business concerns as are described in paragraph (3). For the purposes of this subsection such concerns may be either "start-up" businesses or established "on-going" concerns.
- (3) The types of services and assistance referred to in paragraph (2)(B) shall include the following:
  - (A) Financial assistance, which assistance shall include training and counseling in how to apply for and secure business credit and investment capital; prepare and present financial statements; manage cash-flow and otherwise manage the financial operations of a business concern;
  - (B) Management assistance, which assistance shall include training and counseling in how to plan, organize staff, direct, and control each major activity and function of a small business concern; and
  - (C) Marketing assistance, which assistance shall include training and counseling in how to identify and segment domestic and international market opportunities; prepare and execute marketing plans; develop pricing strategies; locate contract opportunities; negotiate contracts; and utilize varying public relations and advertising techniques.
- (4) Applications for financial assistance pursuant to this subsection shall be evaluated and ranked 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. Such criteria shall include--
  - (A) a criterion that specifically refers to the experience of the offering organization in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;
  - (B) a criterion that specifically refers to the present ability of the offering organization to commence a demonstration project within a minimum amount of time; and
  - (C) a criterion that specifically refers to the ability of the applicant organization to provide training and services to a representative number of women who are both socially and economically disadvantaged.
- (5) The financial assistance authorized pursuant to this subsection shall be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump or installments, and in advance or by way of reimbursement.

## SMALL BUSINESS ACT

(d)<sup>290</sup> (1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by service-disabled veterans,<sup>291</sup> qualified HUBZone small business concerns,<sup>292</sup> small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women,<sup>293</sup> 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 service-disabled veterans, qualified HUBZone small business concerns, small business

Contract opportunities for certain small business concerns.

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for payments in lump sum or installments, and in advance or by way of reimbursement.

(6) (A) The Administration shall prepare and transmit a report to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this subsection. Such report shall provide information concerning--

- (i) the number of individuals receiving assistance;
  - (ii) the number of start-up business concerns formed;
  - (iii) the gross receipts of assisted concerns;
  - (iv) increases or decreases in profits of assisted concerns;
- and
- (v) the employment increases or decreases of assisted concerns.

(B) The report required pursuant to subparagraph (A) shall cover at least a twenty-four month period and shall be submitted not later than thirty months after the effective date of this paragraph.

(7) This subsection shall cease to be effective after September 30, 1991.

<sup>290</sup>Section 8(d) added by § 7 of PL 87-305, approved Sept. 26, 1961 (75 Stat. 667). Substantially rewritten by § 211 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757). Redesignated as § 8(c) by § 3 of PL 102-191.

<sup>291</sup>References in this subsection to "small business concerns owned and controlled by veterans" and "small business concerns owned and controlled by service-disabled veterans" added by § 501 of P.L. 106-50, approved August 17, 1999 (113 Stat. 247).

<sup>292</sup>References in this paragraph and paragraphs 8(d)(3), (4), (6), and (10) to "qualified HUBZone small business concerns" added by § 603(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2631).

<sup>293</sup>References in this paragraph and in paragraphs 8(d)(3), (4), (6) and (10) to "small business concerns owned and controlled by women" added by § 7106(b)(1) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat 3375).

concerns owned and controlled by socially and economically disadvantaged individuals,<sup>294</sup> 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;<sup>295</sup>

(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:

Required  
clause.

"(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by 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, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals,<sup>296</sup> 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.

<sup>294</sup>Clause beginning with "including contracts" to "individuals" added by § 402(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3066).

<sup>295</sup>Phrase "small purchase threshold" inserted in place of "\$10,000" by § 806(e)(2)(A) of P.L. 101-510, approved Nov. 5, 1989 (104 Stat. 1593). Phrase "simplified acquisition threshold" substituted for "small purchase threshold" by § 4404(b) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3349). For a definition of "simplified acquisition threshold", see § 3(m) of this Act.

<sup>296</sup>Clause beginning with "including contracts" to "individuals" added by § 402(b) of PL 98-577.

## SMALL BUSINESS ACT

"(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 --

"Small business concern."  
"Small business concern owned and controlled by socially and economically disadvantaged individuals."

"(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<sup>297</sup>, 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)<sup>298</sup> The term "small business concern owned and controlled by women" shall mean a small business concern--

"Small business concern owned and controlled by women."

(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)<sup>299</sup> The term "small business concern owned and controlled by veterans" shall mean a small business concern—

"Small business concern owned and controlled by veterans."

(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

<sup>297</sup> "Asian Pacific Americans" added by § 118(b) of PL 96-302, approved July 2, 1980 (94 Stat. 833). Section 118(c)(2) of PL 96-302 further provides that this provision shall apply as if included in the amendment made by § 211 of PL 95-507, which substantially rewrote § 8(d) of the Small Business Act.

<sup>298</sup> Subsection 7106(b)(3) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3375), rewrote subparagraph (D) to section 8(d)(3) and added new subparagraph (E).

<sup>299</sup> Subparagraphs (E) and (F) of the clause redesignated as (F) and (G), respectively, and new subparagraph (E) added by § 501(b)(2) of P.L. 106-50, approved August 17, 1999 (113 Stat. 247).

(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, or a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women."

"(G)<sup>300</sup> 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."

"Qualified  
HUBZone  
small  
business  
concern."

(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

<sup>300</sup> Paragraph 8(d)(3)(F) added by § 603(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2631).

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, small business concerns owned and controlled by 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, 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.

Incentives  
for small  
business  
subcon-  
tracting.

(F)<sup>301</sup> (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.

Liquidated  
damages.

(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).

[41 USC  
601].

(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;

<sup>301</sup>Section 8(d)(4)(F) added by § 304(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3872). Section 304(b) of PL 100-656 provides that:

The contract clause required by section 8(d)(4)(F)... 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).

SMALL BUSINESS ACT

(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)<sup>302</sup> 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:

Subcontracting plans.

(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.

<sup>302</sup> New subparagraph 8(d)(4)(G) added by § 415 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2619).

(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, qualified HUBZone small business concerns,<sup>303</sup> 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, qualified HUBZone small business concerns, small business concerns owned and controlled by the 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, 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.

<sup>303</sup> References to "qualified HUBZone small business concerns" throughout paragraph 8(d)(6) added by § 603(a)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2631).

(7) The provisions of paragraph (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 --

Noncompliance is material breach.

(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, 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 [sic] having multiple contracts, on an aggregate basis.

Subcontracting, compliance evaluation.

(11)<sup>304</sup> For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency

<sup>304</sup> Paragraph 8(d)(11) deleted by § 303(a)(1) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4262). Paragraph 8(d)(12), added by § 814(c) of PL 102-190, approved Dec. 5, 1992 (105 Stat. 1425), redesignated as 8(d)(11) by § 303(a)(2) of PL 102-564. Text of former 8(d)(11) is set out below:

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 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

pursuant to this subsection, a mentor firm providing development assistance to a protégé firm under the pilot Mentor-Protégé Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 USC 2301 note) shall be granted credit for such assistance in accordance with subsection (g) of such section.

Mentor-  
Protégé  
Program.  
[10 USC  
2301 note].

(e)<sup>305</sup> (1) Except as provided in subsection (g) --

Proposed  
procure-  
ment action  
notices,  
publication.

(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,<sup>306</sup>

(ii) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement,<sup>307</sup>

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socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.

<sup>305</sup>Section 8(e) added by PL 98-72, approved Aug. 11, 1983 (97 Stat. 403). Rewritten and subsections (f), (g), (h), (i), and (j) added by § 404(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3082). Subsections (e) through (j) effective with respect to any solicitation for bids or proposals issued after March 31, 1985, and apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds, per subsections 404(b) and (c) of PL 98-557, supra.

<sup>306</sup>\$25,000 substituted for "small purchase threshold" by § 4202(d)(1)(A) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345). Phrase "small purchase threshold" was substituted for "\$25,000" by § 806(e)(2)(B) of P.L. 101-510, approved Nov. 5, 1990 (104 Stat. 1593). For a definition of "small purchase threshold", see § 3(m) of this Act. The contract value amount was raised from \$10,000 to \$25,000 by § 922(a)(1) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816). Subsection 8(e)(1)(A)(ii) was also added by § 922(a)(1) of PL 99-661.

<sup>307</sup>Subsection 8(e)(1)(A)(iii) deleted by § 806(e)(2)(B)(iv) of P.L. 101-510, approved Nov. 5, 1990 (104 Stat. 1593). Text of former § 8(e)(1)(A)(iii) is reprinted below:

(iii) 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,

shall furnish for publication by the Secretary of Commerce a notice described in subsection (b) of this section;

(B)<sup>306</sup> 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) --

(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; and

(C) an executive agency awarding a contract for property or services for a price exceeding \$100,000,<sup>307</sup> 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) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not --

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold,<sup>308</sup> 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;

<sup>306</sup>Subsection 8(e)(1)(B) was redesignated 8(e)(1)(C) and new subsection 8(e)(1)(B) was added by § 922(a)(3) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

<sup>307</sup>Amount changed from \$25,000 by § 416(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2620).

<sup>308</sup>Introductory phrase was added by § 4202(d)(1)(B) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345).

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(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) Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include --

Notice of  
solicitation,  
requirements

(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)<sup>309</sup> 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

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<sup>309</sup>Subsection 8(f)(6) added by § 4202(d)(2)(C) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345).

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(g) (1) A notice is not required under subsection (e)(1) if --

Notice not required.

(A)<sup>310</sup> 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 9 of this Act;

(D) the procurement is made against an order placed under a requirements contract;

<sup>310</sup>Subparagraphs (A) and (B) deleted, subparagraphs (C) - (H) renumbered as (B) - (G), respectively, and new subparagraph (A) added by § 850(e) of P.L. 105-85, approved Nov. 18, 1997 (111 Stat. 1848). Former subparagraphs (A) and (B), as added by § 4202(d)(3) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345), are reprinted below:

(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 30A(a)(1) of the Office of Federal Procurement Policy Act or with full FACNET capability certified pursuant to section 30A(a)(2) of such Act;

(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 30A(a)(2) of the Office of Federal Procurement Policy Act; and

(ii) a certification has been made pursuant to section 30A(b) of such Act that Government-wide FACNET capability has been implemented.

SMALL BUSINESS ACT

(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)<sup>311</sup> 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.

Expert services.

(2) The requirements of subsection (a)(1)(A) 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, United States Code.

[41 USC 253(c)  
[10 USC 2304(

(3) The requirements of subsection (a)(1)(A) 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) (1) An executive agency may not award a contract using procedures other than competitive procedures unless --

Noncompetitive awards.

(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 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

[41 USC 414(3)

<sup>311</sup>Subsection 8(g)(1)(H) added by § 1055(b)(2)(C) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3266).

(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, United States Code, as appropriate, have been satisfied. [41 USC 251].

(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, United States Code, 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. [41 USC 253(f)(2)]. [10 USC 2304(f)(2)].

(i) 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). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) For purposes of this section, the term "executive agency" has the meaning provided such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).<sup>312</sup> "Executive agency." [41 USC 403(1)].

(k)<sup>313</sup> 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); 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); and

<sup>312</sup> Section 404(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3082).

<sup>313</sup> New subsection 8(k) added by § 416(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2620). Section 416(b) of the same law provides:

REGULATIONS REQUIRED - The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section.

(B) the due date for receipt of offers.

(l)<sup>314</sup> **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 7(n)(1)).

Management assistance for small businesses affected by military operations.

§ 9.<sup>315</sup> (a) 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.

Research and development.  
15 USC 638.

Policy of Congress.

(b) It shall be the duty of the Administration, and it is hereby empowered --

<sup>314</sup> Subsection 8(l) added by § 303(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 243). Section 303 further provides:

(b) **ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE.**—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, including information regarding the appropriate local office at which affected small businesses may seek such assistance.

(c) **GUIDELINES.**—Not later than 30 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section and the amendment made by this section.

<sup>315</sup> Section 306 of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249), provides:

(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 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 set forth in subsection (a).

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§ 9(b)(1) to  
§ 9(b)(4)

(1) to assist small-business concerns to obtain Government contracts for research and development;

Assistance in  
obtaining  
R & D  
contracts.

(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

Provide  
technical  
assistance.

(4)<sup>316</sup> 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 pilot programs;

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<sup>316</sup>Subsections 9(b)(4) - 9(b)(7) added by § 3 of PL 97-219, Small Business Innovation Development Act of 1982, approved July 22, 1982 (96 Stat. 217). These subsections were to be repealed Oct. 1, 1988, per § 5 of PL 97-219, but were extended to Oct. 1, 1993, by § 2 of PL 99-443, approved Oct. 6, 1986 (100 Stat. 1120). Reference to small business technology transfer pilot programs and to STTR added by § 202(a) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

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(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 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 programs.

Reports

(c) 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.

Other agencies to cooperate with SBA.

(d) (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:

Joint research and development programs.

(A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;

(B) to undertake and utilize applied research;

(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. 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)<sup>316</sup> 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<sup>317</sup>, 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;

"Extramural  
budget."

(2) the term "Federal agency" means an executive agency as defined in section 105 of title 5, United States Code, 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);

"Federal  
agency."

(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;

"Funding  
agreement."

<sup>316</sup>Subsections 9(e) - 9(k) added by § 4 of PL 97-219, Small Business Innovation Development Act of 1982, approved July 22, 1982 (96 Stat. 218). These subsections were to be repealed Oct. 1, 1988, per § 5 of PL 97-219. Congressional findings and purposes that were included in § 2 of PL 97-219 are reprinted at page 989 of this Handbook. Program extended to Oct. 1, 1993, by § 2 of PL 99-443, approved Oct. 6, 1986 (100 Stat. 1120).

<sup>317</sup>Department of Defense exception added by § 1 of PL 99-443, approved Oct. 6, 1986 (100 Stat. 1120); it was deleted by § 103(c) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). That section also inserted the provision for the Department of Energy.

(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 --

"Small  
Business  
Innovation  
Research  
Program."  
"SBIR."

(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),<sup>318</sup> submitted pursuant to SBIR program solicitations;

(B)<sup>319</sup> 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

<sup>318</sup>The phrase "that appear to have commercial potential" and reference to subparagraph (B)(ii) added by § 103(a)(1) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). The reference to (B)(ii) was changed to (B) by § 501(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2621).

<sup>319</sup>Subparagraphs (B) and (C) rewritten by § 103(a)(2) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Text of former subparagraphs (B) and (C) reprinted below:

(B) 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

(C) 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

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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; and

(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;

"Research."  
"Research and  
development."

(6)<sup>320</sup> the term "Small Business Technology Transfer Program" or "STTR" means a pilot 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--

"Small Business  
Technology  
Transfer  
Program."  
"STTR"

(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

"Cooperative  
research and  
development."

<sup>320</sup>Paragraphs 9(e)(6), (7), and (8) added by § 202(b) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

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 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980, 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 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto).

"Research institution."  
[15 USC 3703(5)].

(f)<sup>321</sup> FEDERAL AGENCY EXPENDITURES FOR THE 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--

Research or  
R & D budget.

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

<sup>321</sup>Section 9(f) rewritten by § 103(b) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Former § 9(f) is reprinted below:

(1) Each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1982, or any fiscal year thereafter, shall expend not less than 0.2 per centum of its extramural budget in fiscal year 1983 or in such subsequent fiscal year as the agency has such budget, not less than 0.6 per centum of such budget in the second fiscal year thereafter, not less than 1 per centum of such budget in the third fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: Provided, That any Federal agency which has an extramural budget for research or research and development in excess of \$10,000,000,000 for fiscal year 1982 shall expend not less than 0.1 per centum of its extramural budget in fiscal year 1983, not less than 0.3 per centum of such budget in the second fiscal year thereafter, not less than 0.5 per centum of such budget in the third fiscal year thereafter, not less than 1 per centum of such budget in the fourth fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: Provided further, That a Federal agency shall not make available for the purpose of meeting the requirements of this subsection an amount of its extramural budget for basic research or research and development which exceeds the percentages specified herein. Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than under a small business innovation research program shall not be counted as meeting any portion of the percentage requirements of this subsection.

(2) 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.

SMALL BUSINESS ACT

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996; and

(C)<sup>322</sup> 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--

Limitations.

(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).

Exclusion of certain funding agreements

(g) Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this Act 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)<sup>323</sup> 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--

Critical technologies

<sup>322</sup>Section 106 of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249) provides:

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 would adversely affect the performance of the research programs of the Department of Defense.

<sup>323</sup>Paragraphs 9(g)(3) - (7) redesignated as (4) - (8) and new paragraph 9(g)(3) added by § 103(d) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

(A) the National Critical Technologies Panel (or its successor) in the 1991 report required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, and in subsequent reports issued under that authority; or [42 USC 6615].

(B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522 of title 10, United States Code, and in subsequent reports issued under that authority; [10 USC 2522].

(4) unilaterally receive and evaluate proposals resulting from SBIR proposals;

(5)<sup>324</sup> subject to subsection (l), 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<sup>325</sup> 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; and

(8) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy.

(h) In addition to the requirements of subsection (f), 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. Agency goals for funding agreements.

(i) 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 Report to SBA.

<sup>324</sup>Reference to subsection 9(l) added by § 103(h)(2) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). The phrase from "inform" to the semicolon added by § 103(i) of PL 102-564.

<sup>325</sup>The last clause in this paragraph was added by § 103(e) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

amount of such awards with awards to other than small business concerns.

(j) (1)<sup>326</sup> **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 the enactment of the Small Business Innovation Development Act of 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for --

SBIR  
policy  
directives.

- (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) 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;

<sup>326</sup>Section 9(j) was rewritten by § 103(e) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). That section renumbered subparagraphs 9(j)(2)(A) - (H) as clauses (i) - (vii), redesignated paragraphs 9(j)(1) - (7) as subparagraphs (A) - (G), added the title in new paragraph 9(j)(1) and added new paragraph 9(j)(2).

(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)<sup>327</sup> 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).

(2) MODIFICATIONS.—Not later than 90 days after the enactment of the Small Business Research and Development Enhancement Act of 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;

(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 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 603 of the National Science and Technology Policy,

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<sup>327</sup>Subsections 9(j)(6) and (7) were added (and conforming changes made to subsections 4 and 5) by § 108 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2994).

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Organization, and Priorities Act of 1976; or

(ii) by the Secretary of Defense, in accordance with section 2522 of title 10, United States Code;

(F) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 8(a)(4), 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 General Accounting Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

(k)<sup>328</sup> [Reserved].

(l)<sup>329</sup> REPORTING OF AWARDS MADE FROM SINGLE PROPOSAL, TO

Reporting of awards.

<sup>328</sup>Section 9(k) was deleted by sec. 103(g) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4253). Text of former sec. 9(k) is reprinted:

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.

<sup>329</sup>Subsection 9(l) added by § 103(h) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

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MULTIPLE AWARD WINNERS, OR TO CRITICAL TECHNOLOGY TOPICS--

(1) SINGLE PROPOSAL.--If a Federal agency required to establish an SBIR program under subsection (f) 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).

(2) MULTIPLE AWARDS.--An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) 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) an accounting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3), 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)<sup>330</sup> TERMINATION.--The authorization to carry out the Small Business Innovation Research Program under this section shall terminate on October 1, 2000.

Sunset.

(n)<sup>331</sup> REQUIRED EXPENDITURES FOR STTR BY FEDERAL AGENCIES.--

(1) REQUIRED EXPENDITURE AMOUNTS - With respect to fiscal

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<sup>330</sup>Subsection 9(m) added by § 104(b) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Section 104(a) of PL 102-564 repealed section 5 of the Small Business Innovation Development Act of 1982 (PL 97-219).

<sup>331</sup>Subsections 9(n) - (p) added by § 202(c) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Paragraph 9(n)(1) was rewritten by § 501(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2620). Text of former paragraph 9(n)(1) is reprinted below:

(1) REQUIRED EXPENDITURE AMOUNTS.--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.

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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.

(2) LIMITATIONS:--A Federal agency shall not--

Limitation

(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 25(c)(1) of the Office of Federal Procurement Policy Act); 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).

Exclusion of  
certain funding  
agreements

(o) FEDERAL AGENCY STTR AUTHORITY.--Each Federal agency required to establish an STTR program in accordance with subsection (n) and regulations issued under this Act, 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 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976; or

[42 USC 6615].

(B) by the Secretary of Defense, in accordance with section 2522 of title 10, United States Code;

[10 USC 2522].

- (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)<sup>332</sup> include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, 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) develop a model agreement not later than July 31, 1993, to be approved by the Administration, 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 (c)(8)) that participate in STTR agreements--
  - (A) are free from organizational conflicts of interests relative to the STTR program;

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<sup>332</sup> Paragraphs 9(o)(8) through (11) renumbered 9(o)(10) through (13), respectively, and new paragraphs (8) and (9) added by § 501(b) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2621).

(B) do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(C) use outside peer review, as appropriate; and

(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.

(p)<sup>333</sup> 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) to establish an STTR program;

(B)<sup>334</sup> 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.

<sup>333</sup> Section 202(d) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249), provides:

The policy directive required by section 9(p) 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.

<sup>334</sup> Changed from "the Commissioner of Patents and Trademarks" by § 4732(b)(5) of P.L. 106-113, approved Nov. 29, 1999 (113 Stat. 1501).

SMALL BUSINESS ACT

§ 9(p)(2) to  
§ 9(p)(2)(A)

provide for-- (2) CONTENTS.--The policy directive required by paragraph (1) shall

(A) simplified, standardized, and timely STTR solicitations;

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- (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 \$500,000, greater or lesser amounts to be awarded at the discretion of the awarding agency;
- (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 3 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.

(q)<sup>334</sup> DISCRETIONARY TECHNICAL ASSISTANCE.--

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)<sup>335</sup> 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

<sup>334</sup>Subsection 9(q) added by § 301(a) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

<sup>335</sup>Subsection 9(q)(2) rewritten by § 607 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4204). Text of former § 9(q)(2) is reprinted below:

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).

\$4,000 per year.

(r)<sup>336</sup> 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) DEFINITION.--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).

"Third phase agreement."

(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)<sup>337</sup> OUTREACH

(1) DEFINITION OF ELIGIBLE STATE - In this subsection, the term "eligible State" means a State—

"Eligible 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) 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 fiscal year 1998, 1999, 2000, or 2001 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

<sup>336</sup>Subsection 9(r) added by § 305 of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

<sup>337</sup> New subsections 9(s) and (t) added by § 501(b)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2621). Section 501(b)(2) provides for the repeal of subsection 9(s) effective October 1, 2001.

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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.

(i) **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, United States.

§ 10.<sup>338</sup>(a) The Administration shall, as soon as practicable each fiscal<sup>339</sup> 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

Reports.  
15 USC 639.

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<sup>338</sup>Former § 10(a) was rewritten and the reporting requirement changed from semiannual to annual by § 5(a)(1) of PL 87-305, approved Sept. 26, 1961 (75 Stat. 666). Additional reporting requirements were imposed by § 7 of PL 93-237, approved Jan. 2, 1974 (87 Stat. 1023), which added the second and third sentences and made other insubstantial changes to § 10(a).

<sup>339</sup>"Fiscal" year substituted for "calendar" year by § 3(4) of PL 93-608, an Act to discontinue or modify certain reporting requirements of law, approved Jan. 2, 1975 (88 Stat. 1967).

## SMALL BUSINESS ACT

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<sup>340</sup> 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 Act 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 Act.<sup>341</sup>

(b) 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,<sup>342</sup> as soon as practicable each fiscal year,<sup>343</sup> 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.<sup>344</sup> 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<sup>345</sup> this Act. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 7(a) 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.

Report to  
Congressional  
committees.

<sup>340</sup>"Senate Select Committee on Small Business" added by § 203 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The Senate deleted the word "Select" by S. Res. 101, 97th Cong., 1st Sess., Mar. 25, 1981.

<sup>341</sup>Last sentence added by § 211 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The requirement of the report of the progress in liquidating the assets and winding up the affairs of the RFC repealed by § 3(4) of PL 93-608, an Act to discontinue or modify certain reporting requirements of law, approved Jan. 2, 1975 (88 Stat. 1967).

<sup>342</sup>"Committee on Small Business of the House of Representatives" substituted for "House Select Committee to Conduct a Study and Investigation of the Problems of Small Business" by § 204 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553).

<sup>343</sup>The phrase "as soon as practicable each fiscal year" substituted for "on December 31 of each year" by § 3(5) of PL 93-608, an Act to discontinue or modify certain reporting requirements of law, approved Jan. 2, 1975 (88 Stat. 1967).

<sup>344</sup>The reporting requirement to § 10(b) was changed from semiannual to annual by § 5(a)(2) of PL 87-305, approved Sept. 26, 1961 (75 Stat. 667).

<sup>345</sup>The words "this Act" . . . through the end of § 10(b) added by § 1904 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). This change also deleted prior language concerning reporting requirements for former § 7(l) loans, which had been added by PL 95-315, the Small Business Energy Loan Act of 1978, approved July 4, 1978 (92 Stat. 379).

(c)<sup>346</sup> [Repealed].

(d) 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<sup>347</sup> 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.

Defense  
procurement  
reports.

(e) The Administration and the Inspector General of the Administration<sup>348</sup> 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,<sup>349</sup> or their duly authorized representatives.

Maintenance of  
records availabl  
to Small Busine  
Committees.

(2)<sup>350</sup> 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

<sup>346</sup>Subsection 10(c) repealed by § 1091 of P.L. 104-66, approved Dec. 21, 1995 (109 Stat. 722). Text of former § 10(c) is set out below:

(1) The Attorney General is directed to make, or direct the Federal Trade Commission to make for him, surveys of any activity of the Government which may affect small business, for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business.

(2) The Attorney General shall submit to the Congress, the Senate Select Committee on Small Business and the President, at such times as he deems desirable, but not less than once every year, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

<sup>347</sup>Monthly reports by Department of Defense changed to annual report by § 241(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2826).

<sup>348</sup>The Inspector General was added by § 406(e)(1) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3876).

<sup>349</sup>"Committee on Small Business of the House of Representatives" substituted for "House Select Committee to Conduct a Study and Investigation of the Problems of Small Business" by § 207 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553).

<sup>350</sup>Paragraph 10(e)(2) was added by § 406(e)(2) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3876). There is no paragraph 10(e)(1).

7(j) or 8(a). 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<sup>351</sup> by such office.

(f) 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 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)<sup>352</sup> 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<sup>353</sup> a sealed report with respect to--

Report to  
Congress.

(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)<sup>354</sup> 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

Report to  
Congressional  
Committees.

<sup>351</sup>"Request" substituted for "matter" by § 15 of PL 101-37, approved June 15, 1989 (103 Stat. 73).

<sup>352</sup>Added by § 4 of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742).

<sup>353</sup>"Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives" substituted for "Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives" by § 208 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The Senate deleted the word "Select" by S. Res. 101, 97th Cong., 1st Sess., Mar. 25, 1981.

<sup>354</sup>Subsection 10(h) added by § 4 of PL 98-352, Small Business Secondary Market Improvements Act of 1984, approved July 10, 1984 (98 Stat. 329).

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fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

§ 11. (a) 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 Act. 15 USC 640.

(b) No act or omission to act pursuant to this Act which occurs while this Act 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 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. Antitrust exemption.

(c) 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.<sup>355</sup>

(d) 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.

§ 12. 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, Transfer of small-business functions. 15 USC 641.

<sup>355</sup>The President delegated this authority to the SBA Administrator by Exec. Order No. 10493, 3 C.F.R. 974 (1949-1953 compilation), 18 Fed. Reg. 6583 (1958). See page 701 of this Handbook.

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property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

§ 13. No loan shall be made or equipment, facilities, or services furnished by the Administration under this Act 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 service, 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 Act; 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.

Listing of agents and attorneys.  
15 USC 642.

§ 14. 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 cost incurred by the Administration.

Charges for Government owned property.  
15 USC 643.

§ 15.<sup>356</sup>(a) To effectuate the purposes of this Act, small business concerns within the meaning of this Act 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<sup>357</sup> 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 Act 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. <sup>358</sup>If a proposed procurement includes in its statement of work goods or services currently being performed by

Awards or contracts, determination.  
15 USC 644.

Set-asides based on industry category.

<sup>356</sup>Section 502 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553), redesignated the first subsection as "(a)" and added subsections (b), (c), (d), (e), and (f).

<sup>357</sup>Language dealing with industry categories added by § 921(a)(1) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816), as amended by § 10(a)(1) of PL 100-26, approved April 21, 1987 (101 Stat. 273), made applicable as per § 12(c) thereof as of enactment of PL 99-661, *supra*.

<sup>358</sup>The 3 sentences following footnote signal added by § 208 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2820).

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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,<sup>359</sup> 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 3(o)) is necessary and justified.<sup>360</sup> 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.<sup>361</sup> 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 four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published 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

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<sup>359</sup> The reference to the bundling of contract requirements was added by § 413(b)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2619).

<sup>360</sup> Number (5), requiring agency justification for bundled contract requirements, was added by § 413(b)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2619).

<sup>361</sup> Added by § 921(a)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

located outside of the general areas where such concerns are located.<sup>362</sup> 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.

Awarding of  
contracts at fair  
market price.

(b) 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 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694 (b)), 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)<sup>363</sup> (1) As used in this subsection:

(A) The term "Committee" means 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).

"Committee."  
[41 USC 46].

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 3(e).

"Public or private  
organization for  
the handicapped"

(C) The term "handicapped individual" has the same meaning given such term in section 3(f).

"Handicapped  
individual."

(2) (A)<sup>364</sup> 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.

<sup>362</sup>Added by § 921(b) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

<sup>363</sup>Section 15(c) rewritten by § 133(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3005). For prior version, see § 116 of PL 96-302, approved July 2, 1980 (94 Stat. 833). Sections 133(b) and (c) of PL 100-590 provide:

(b) Report Not later than September 30, 1992, the General Accounting Office shall prepare a report describing the impact that contracts awarded under section 15(c) of the Small Business Act have had on for-profit small business concerns for fiscal years 1989 through 1991. The report shall be transmitted to the Committees on Small Business of the Senate and the House of Representatives.

(c) Task Force 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 affairs of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely 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 and recommending to the Small Business Administration such administrative or statutory changes as it deems appropriate.

<sup>364</sup>Paragraph 15(c)(2)(A) amended to apply only to fiscal year 1995 by § 305 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4189).

SMALL BUSINESS ACT

(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 2 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. 47).

[41 USC 47].

(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.

Appeal of award.

(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.

Rep. Office  
Federal  
Procurement  
Policy.

(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)<sup>365</sup> Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business<sup>366</sup> concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of

Contract awards  
priority.

<sup>365</sup>Paragraph 15(c)(7) added by § 305(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4190).

<sup>366</sup>Words "small business" added by § 117(a) of PL 96-302, approved July 2, 1980 (94 Stat. 833).

concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides 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)<sup>367</sup> PROCUREMENT STRATEGIES; CONTRACT BUNDLING—

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

<sup>367</sup>New subsection 15(e) added by § 413(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2618). Former subsections 15(e) and (f) deleted by § 7101(a) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3367). Text of former subsections 15(e) and (f) is set out below:

(e) 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.

(f) After priority is given to the small business concerns specified in subsection (e), 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);
- (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.

SMALL BUSINESS ACT

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) [deleted].

(g)<sup>368</sup> (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 veterans,<sup>369</sup> qualified HUBZone small business concerns<sup>370</sup>, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women<sup>371</sup>. The Government-wide goal for participation by small business concerns shall be established at not less than 23<sup>372</sup> 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 Government-wide 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

Government  
wide  
goals.

<sup>368</sup> Subsections (g), (h), (i), (j) and (k) added by § 221 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757). Subsection 15(g)(1) inserted by § 502(3) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3881), effective October 1, 1989, per § 803(b)(3)(C) thereof. Section 7102(a) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3367), provides:

(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.

<sup>369</sup> Participation goals for small business concerns owned and operated by service-disabled veterans added by § 502(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 247).

<sup>370</sup> References to "qualified HUBZone small business concerns" added by § 603(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

<sup>371</sup> References to "small business concerns owned and controlled by women" here and in paragraph (g)(2) and subsection (h) added by § 7106(a)(1) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3374).

<sup>372</sup> The government-wide contracting goals changed from 20 to 23 percent by § 603(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

## SMALL BUSINESS ACT

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.<sup>373</sup>

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.<sup>374</sup>

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,<sup>375</sup> by qualified HUBZone small business concerns,<sup>376</sup> 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 having a value of \$25,000 or more.<sup>377</sup> 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

<sup>373</sup>Contract goals for qualified HUBZone small business concerns added by § 603(b)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

<sup>374</sup>Contract goals for small business concerns owned and controlled by women added by § 7106(a)(2)(A) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3375).

<sup>375</sup>References in this paragraph to small business concerns owned and controlled by service-disabled veterans added by § 502(b) of P.L. 106-50, approved August 17, 1999 (113 Stat. 248).

<sup>376</sup>References to qualified HUBZone small business concerns added by § 603(b)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

<sup>377</sup>Subsection 921(b)(1) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816), removed the \$10,000 value. Subsection 809(a)(1) of PL 100-180, approved Dec. 4, 1987 (101 Stat. 1130), added the \$25,000 value, providing also that the amendment would be in effect until Sept. 30, 1988. Subsection 809(a)(2) of PL 100-180 provided that the \$25,000 value would be stricken effective Oct. 1, 1988. Section 731 of PL 100-656 amended subsection 809(a)(2) of PL 100-180 by extending the date on which the \$25,000 value would be removed until Oct. 1, 1989.

owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals 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.<sup>378</sup> 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 8(a).<sup>379</sup>

(h) (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),<sup>380</sup> qualified HUBZone small business concerns,<sup>381</sup> small business

Reports  
to SBA.

<sup>378</sup>Reference to small business concerns owned and controlled by women added by § 7106(a)(2)(C) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3375).

<sup>379</sup>Section 221 of PL 95-507 established the small business set-asides for procurement contracts having a value of \$10,000 or more. Subsection 921(d)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816), removed the \$10,000 threshold and added the last two sentences in § 15(g).

<sup>380</sup>References to veterans in this subsection added by § 601 of P.L. 106-50, approved August 17, 1999 (113 Stat. 248). Section 603 of that law provides:

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 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); and

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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)<sup>382</sup> The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to

Reports  
to the  
President  
and the  
Congress.

(3) proposals to improve the access of such small business concerns to the assistance made available by the United States.

Section 604 of P.L. 106-50 provides:

(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. 4059d)(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.

<sup>381</sup>References to qualified HUBZone small business concerns added by § 603(b)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

<sup>382</sup>Last sentence of subsection 15(h)(1), requiring SBA to comment to the Small Business Committees, deleted and paragraph 15(h)(2) added by § 503 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3881), effective October 1, per § 803(b)(3)(C) thereof.

the President and the Congress.<sup>383</sup> 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,<sup>384</sup> 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,
- 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.

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<sup>383</sup> "and the Congress" added by § 601(b)(1) of P.L. 106-50, approved August 17, 1999 (113 Stat. ). Section 601(b)(2) of that law added the reference to veterans.

<sup>384</sup> "Individuals" added by § 19 of PL 101-37, approved June 15, 1989 (103 Stat. 74).

(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 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).<sup>385</sup>

State of small business report. [15 USC 631b(a)].

(i) Nothing in this Act 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)<sup>386</sup> (1) Each contract for the purchase of goods and services that has an

Small purchases.

<sup>385</sup>Reference is to PL 96-302, approved July 2, 1980 (94 Stat. 848).

<sup>386</sup>Section 15(j) rewritten by § 4004 of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3338). Text of former § 15(j) is set out below:

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 circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

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 8 of this Act, section 2323 of title 10, United States Code, 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.

[10 USC  
2323].  
[15 USC  
644 note].

(k) 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 --

Office of  
Small and  
Disadvantag  
Business  
Utilization.

(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)<sup>383</sup> 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 to, such Secretary or the Secretary's designee,

(4) be responsible for the implementation and execution of the functions and duties under sections 8 and 15 of this Act which relate to such agency,

(5)<sup>384</sup> 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

<sup>383</sup>Exception for the Office of the Secretary of Defense in paragraph (3) added by § 603(1) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3888).

<sup>384</sup>Paragraphs 15(k)(5) through (9) renumbered as 15(k)(6) through (10), respectively, and new paragraph 15(k)(5) added by § 413(e) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2619). Paragraphs 15(k)(5), (6), and (7) renumbered (6), (7), and (8), respectively and new subsection 15(k)(5) added by § 12 of PL 100-496, approved Oct. 17, 1988 (102 Stat. 2465), effective as to contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter beginning more than 90 days after Oct. 17, 1988, per § 14(a). Subsection (k)(5) amended to include specifically protection for subcontractors and suppliers and the references to the FAR by § 806(d) of PL 102-190, approved Dec. 5, 1991 (105 Stat. 1419).

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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, late payment interest penalties, or information due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31, United States Code, 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 sections 8 and 15 of this Act,

(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 sections 8 and 15 of this Act,

(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)<sup>385</sup> make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), or section 8(a) of this Act or section 2323 of title 10, United States Code. Such recommendations shall be made with due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.

[10 USC 2323].

This subsection shall not apply to the Administration.

(l)<sup>386</sup> (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.

<sup>385</sup>Subsection 15(k)(9) added by § 603(4) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3888).

<sup>386</sup>Former subsection "l" renumbered "m" and new subsection "l" inserted by § 403(a) of PL 98-577, approved Oct. 30, (98 Stat. 3066).

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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).

(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)<sup>387</sup> 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)<sup>388</sup> 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

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<sup>387</sup>The phrase "unrestricted technical data" was changed to "technical data" by § 110(1) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2994).

<sup>388</sup>Subsection 15(l)(2)(E) was rewritten by § 110(2) of PL 100-590. Prior version limited access to unclassified procurement records, see § 403(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3066).

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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)<sup>389</sup> 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).

(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).<sup>390</sup>

(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

"Major  
procurement  
center."

<sup>389</sup>Subsection 15(l)(3) was rewritten by § 110(3) of PL 100-590.

<sup>390</sup>Because of the renumbering of the paragraphs in § 15(k) of the Act by § 12 of PL 100-496, approved Oct. 17, 1988 (102 Stat. 2465), this reference should be to § 15(k)(7).

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.<sup>391</sup>

(7)<sup>392</sup> (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)<sup>393</sup> (1) Each agency subject to the requirements of section 2323 of title 10, United States Code, shall, when implementing such requirements-- [10 USC 2323].

(A) establish policies and procedures that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) 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 8(a).

(2) All procurement center representatives (including those referred to in subsection (k)(6)),<sup>394</sup> in addition to such other duties as may be assigned by the Administrator, shall--

<sup>391</sup>Subsection 15(l)(6) was rewritten by § 110(4) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2994). Prior paragraph 15(l)(6), read:

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.

<sup>392</sup>Subsection 15(l)(7) added by § 110(5) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995).

<sup>393</sup>Section 15(m) rewritten by § 601 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3887). For prior version, see § 233 of PL 95-507, approved Oct. 24, 1978 (97 Stat. 1757) as renumbered by § 403(a) of PL 98-577 (98 Stat. 3066).

<sup>394</sup>Because of the renumbering of the paragraphs in § 15(k) of the Act by § 12 of PL 100-496, approved Oct. 17, 1988 (102 Stat. 2465), this reference should be to § 15(k)(7).

(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 8(a), and section 2323 of title 10, United States Code.

(n) 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.<sup>395</sup>

Labor surplus  
area  
determinatio

(o)<sup>396</sup> (1) A concern may not be awarded a contract under subsection (a) 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; and

Composition  
of labor force.

(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

<sup>395</sup>Subsection (n) added by § 18003(a) of PL 99-272, approved April 7, 1986 (100 Stat. 363). Section 18003(b) provided that this amendment will take effect on the ninetieth day after enactment.

<sup>396</sup>Subsection (o) added by § 921(c)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816). Paragraph (1)(A) originally read "... the concern will perform at least 50 percent of the cost of the contract with its own employees;". Current language added by § 10(b)(1)(A) of PL 100-26, approved April 21, 1987 (100 Stat. 288), made applicable by § 12(c) as of the enactment of PL 99-661, *supra*.

such requirement shall be determined in accordance with paragraph (2).<sup>397</sup>

§ 16. (a) 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 Act, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

Penalty for false  
statements.  
15 USC 645.

(b) 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.

Penalty for  
wrongful  
conduct.

(c) 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.<sup>398</sup>

Penalty for  
misappropriation  
of SBA collateral

<sup>397</sup>Last sentence in subsection 15(o)(3) added by § 10(b)(1)(B)(ii) of PL 100-26, approved April 21, 1987 (101 Stat. 288). Section 15(p) repealed by § 809(c) of PL 100-180, approved Dec. 4, 1987 (101 Stat. 1130). Text of repealed § 15(p):

(p) (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, United States Code.

<sup>398</sup>Section 16(c) added by § 2 of PL 88-264, approved Feb. 5, 1964 (78 Stat. 8).

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(d)<sup>399</sup> (1) Whoever misrepresents the status of any concern or person as a "small business concern," a "qualified HUBZone small business concern",<sup>400</sup> a "small business concern owned and controlled by socially and economically disadvantaged individuals" or a small business concern[s] owned and controlled by women",<sup>401</sup> in order to obtain for oneself or another any --

Penalty  
misrepresentation.

- (A) prime contract to be awarded pursuant to section 9, 15, or 31;
- (B) subcontract to be awarded pursuant to section 8(a);
- (C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or
- (D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, 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 Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

[31 USC 3801].

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<sup>399</sup>Section 16(d) rewritten by § 405(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3875). For prior version of this section, see § 18009 of PL 99-272, approved April 7, 1986 (100 Stat. 368).

<sup>400</sup> Reference to "qualified HUBZone small business concern" and section 31 added by § 603(c)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

<sup>401</sup>Reference to women added by § 7106(c)(1) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3376).

SMALL BUSINESS ACT

(e) Any representation of the status of any concern or person as a "small business concern", a "HUBZone small business concern",<sup>402</sup> a "small business concern owned and controlled by socially and economically disadvantaged individuals", or a "small business concern[s] owned and controlled by women"<sup>403</sup> in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.<sup>404</sup>

(f)<sup>405</sup> Whoever falsely certifies past compliance with the requirements of section 7(j)(10)(I) of this Act shall be subject to the penalties prescribed in subsection (d).

§ 17. 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.

Subordination  
of SBA  
collateral.  
15 USC 646.

§ 18.<sup>406</sup>(a) The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government<sup>407</sup> and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. 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.<sup>408</sup>

Avoidance of  
duplication.  
15 USC 647.

(b) As used in this Act --

(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

"Agricultura  
enterprises."

(2) "credit elsewhere" means the availability of sufficient credit from

"Credit  
elsewhere."

<sup>402</sup> Reference to "HUBZone small business concern" added by § 603(c)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

<sup>403</sup>Reference to women added by § 7106(c)(2) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3376).

<sup>404</sup>Subsections 16(d) and (e) added by § 18009 of PL 99-272, approved April 7, 1986 (100 Stat. 368).

<sup>405</sup>Subsection 16(f) added by § 405(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3875).

<sup>406</sup>Section 18 redesignated as § 18(a) and § 18(b) added by PL 96-38, approved July 25, 1979 (93 Stat. 97, 119).

<sup>407</sup>The exception for agricultural concerns established by § 112(e) of PL 94-305, approved June 4, 1976 (90 Stat. 663), was deleted by § 18006(a)(3) of PL 99-272, approved April 7, 1986 (100 Stat. 366). The repealed exception applied to "enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related activities." See also first clause of § 7(b) of the Act.

<sup>408</sup>Last sentence added by § 5 of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742).

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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.<sup>409</sup>

§ 19. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Separability.  
15 USC 631  
note.

§ 20.<sup>410</sup>(a) (1) For fiscal year 1985 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. <sup>411</sup>For fiscal year 1986 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to be available solely (1) to carry out the provisions and purposes of the Small Business Development Center Program in section 21, but not to exceed the level as specified in subsection (a) of such section, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in section 21(h), and (3) to reimburse centers for participation in evaluations as provided in section 21(j). All appropriations whether specifically or generally authorized shall remain available until expended.

Authorization  
for  
appropriations  
Program level  
15 USC 631  
note.

(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 and the Small Business Investment Act of 1958, 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.<sup>412</sup> 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 may be obligated in one fiscal year and disbursed or guaranteed in<sup>413</sup> any 1 or more of the 4 subsequent fiscal years.

<sup>409</sup>Original § 18(b) added by PL 96-38, approved July 25, 1979 (93 Stat. 97, 119). Amended by § 119(c)(2) of PL 96-302, approved July 2, 1980 (94 Stat. 833), by adding definition of "agricultural enterprises." Amendments made to § 18 by § 119 of PL 96-302 shall not apply to any disaster which commenced on or before the effective date of PL 96-302 (i.e. July 2, 1980) per § 119(d) of PL 96-302. For another definition of "credit elsewhere," see § 3(h) of this Act.

<sup>410</sup>Section 20 was renumbered and rewritten and subsections (d) through (h) added by § 101 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2990).

<sup>411</sup>Sentence following this footnote signal added by § 3(1) of PL 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

<sup>412</sup>Subsection 20(a)(2) added by § 18012 of PL 99-272, approved April 7, 1986, (100 Stat. 369). The last sentence added by § 414 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1018).

<sup>413</sup> The phrase "the following fiscal year" was replaced by § 211 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

(3)<sup>414</sup> 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.

Disaster loan  
fund, transfe

(4)<sup>415</sup> Except as may be otherwise specifically provided by law, the amount of deferred participation loans authorized in this section--

Deferred  
participation  
loans.

(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)<sup>416</sup> 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 and the Small Business Investment Act of 1958. 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, of sections 7(b)(1) and 7(b)(2) of this Act; 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.

FY 1991.

(c)<sup>417</sup> FISCAL YEAR 1998 --

FY 1998.

(1) PROGRAM LEVELS - The following program levels are authorized for fiscal year 1998:

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

(i) \$40,000,000 in technical assistance grants, as provided in section 7(m); and

<sup>414</sup> Paragraph 20(a)(3) added by § 102 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2818).

<sup>415</sup> New paragraph (4) added by § 102(1) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 987).

<sup>416</sup> Former subsections 20(b) through (g) deleted, former subsection 20(h) redesignated 20(b) and new subsections 20(c) through 20(j) added by § 101 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2815).

<sup>417</sup> Former subsections 20(c) through (q) were deleted and new subsections 20(c) through (e) added by § 101 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2594). For text of former subsections 20(c) through (q), please refer to earlier editions of this Handbook.

7(m). (ii) \$60,000,000 in direct loans, as provided in section

(B) For the programs authorized by this Act, the Administration is authorized to make \$16,040,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

(i) \$12,000,000,000 in general business loans as provided in section 7(a);

(ii) \$3,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

(iii) \$1,000,000,000 in loans as provided in section 7(a)(21); and

(iv) \$40,000,000 in loans as provided in section 7(m).

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i) \$700,000,000 in purchases of participating securities; and

(ii) \$600,000,000 in guarantees of debentures.

(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$2,000,000,000, of which not more than \$650,000,000 may be in bonds approved pursuant to section 411(a)(3) of that Act.

(E) The Administration is authorized to make grants or enter into cooperative agreements—

(i) for the Service Corps of Retired Executives program authorized by section 8(b)(1), \$4,000,000; and

(ii) for activities of small business development centers pursuant to section 21(c)(3)(G), \$15,000,000, to remain available until expended.

## (2) ADDITIONAL AUTHORIZATIONS—

(A) There are authorized to be appropriated to the Administration for fiscal year 1998 such sums as may be necessary to carry out this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses

of the Administration.

(B) Notwithstanding subparagraph (A), for fiscal year 1998—

(i) no funds are authorized to be provided to carry out 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 behalf of the Administration or on behalf of any other 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 \$1,250,000.

(3)<sup>418</sup> HUBZONE PROGRAM - There are authorized to be appropriated to the Administration to carry out the program under § 31, \$5,000,000 for fiscal year 1998.

(d) FISCAL YEAR 1999—

FY 1999.

(1) PROGRAM LEVELS - The following program levels are authorized for fiscal year 1999:

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

(i) \$40,000,000 in technical assistance grants as provided in section 7(m); and

(ii) \$60,000,000 in direct loans, as provided in section 7(m).

(B) For the programs authorized by this Act, the Administration is authorized to make \$17,540,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

(i) \$13,000,000,000 in general business loans as provided in section 7(a);

(ii) \$3,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

(iii) \$1,000,000,000 in loans as provided in section 7(a)(21);

<sup>418</sup> New § 20(c)(3) added by § 607(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2635).

and

(iv) \$40,000,000 in loans as provided in section 7(m).

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i)<sup>419</sup> \$1,200,000,000 in purchases of participating securities;

and

(ii) \$700,000,000 in guarantees of debentures.

(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$2,000,000,000, of which not more than \$650,000,000 may be in bonds approved pursuant to section 411(a)(3) of that Act.

(E) The Administration is authorized to make grants or enter cooperative agreements—

(i) for the Service Corps of Retired Executives program authorized by section 8(b)(1), \$4,500,000; and

(ii) for activities of small business development centers pursuant to section 21(c)(3)(G), not to exceed \$15,000,000, to remain available until expended.

(2) ADDITIONAL AUTHORIZATIONS—

(A) There authorized to be appropriated to the Administration for fiscal year 1999 such sums as may be necessary to carry out this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

(B) Notwithstanding subparagraph (A), for fiscal year 1999—

(i) no funds are authorized to be provided to carry out 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 behalf of the Administration or on behalf of any other department or agency, by contract or otherwise,

<sup>419</sup> Amount changed from \$800,000,000 by § 2(b)(1) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

SMALL BUSINESS ACT

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 \$1,250,000.

(3)<sup>420</sup> HUBZONE PROGRAM - There are authorized to be appropriated to the Administration to carry out the program under section 31, \$5,000,000 for fiscal year 1999.

(e) FISCAL YEAR 2000—

FY 2000.

(1) PROGRAM LEVELS - The following program levels are authorized for fiscal year 2000:

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

(i) \$40,000,000 in technical assistance grants as provided in section 7(m); and

(ii) \$60,000,000 in direct loans, as provided in section 7(m).

(B) For the programs authorized by this Act, the Administration is authorized to make \$20,040,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

(i) \$14,500,000,000 in general business loans as provided in section 7(a);

(ii) \$4,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

(iii) \$1,000,000,000 in loans as provided in section 7(a)(21); and

(iv) \$40,000,000 in loans as provided in section 7(m).

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i)<sup>421</sup> \$1,500,000,000 in purchases of participating securities; and

<sup>420</sup> New § 20(d)(3) added by § 607(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2635).

<sup>421</sup> Amount changed from \$900,000,000 by § 2(b)(2) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

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(ii) \$800,000,000 in guarantees of debentures.

(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$2,000,000,000, of which not more than \$650,000,000 may be in bonds approved pursuant to section 411(a)(3) of that Act.

(E) The Administration is authorized to make grants or enter cooperative agreements—

(i) for the Service Corps of Retired Executives program authorized by section 8(b)(1), \$5,000,000; and

(ii) for activities of small business development centers pursuant to section 21(c)(3)(G), not to exceed \$15,000,000, to remain available until expended.

(2) ADDITIONAL AUTHORIZATIONS—

(A) There are authorized to be appropriated to the Administration for fiscal year 2000 such sums as may be necessary to carry out this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

(B) Notwithstanding subparagraph (A), for fiscal year 2000—

(i) no funds are authorized to be provided to carry out 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 behalf of the Administration or on behalf of any other 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 \$1,250,000.

(3)<sup>422</sup> HUBZONE PROGRAM - There are authorized to be appropriated to the Administration to carry out the program under section 31, \$5,000,000 for fiscal year 2000.

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<sup>422</sup> New § 20(e)(3) added by § 607(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2636).