

(f)⁴²³ DISASTER MITIGATION PILOT PROGRAM.—The following program levels are authorized for loans under section 7(b)(1)(C):

Disaster mitigation pilot program, authorization.

- (1) \$15,000,000 for fiscal year 2000.
- (2) \$15,000,000 for fiscal year 2001.
- (3) \$15,000,000 for fiscal year 2002.
- (4) \$15,000,000 for fiscal year 2003.
- (5) \$15,000,000 for fiscal year 2004.

§ 21.⁴²⁴(a) (1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women's business center operating pursuant to section 29,⁴²⁵ any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as "applicants") to assist in establishing small business development centers and to any such body for: small business oriented employment or

Small business development centers.
15 USC 648.

⁴²³Subsection 20(f) added by § 1(b) of P.L. 106-24, approved April 27, 1999 (113 Stat. 39).

⁴²⁴Former § 21 redesignated as § 30 and new § 21 added by Title II, § 202 of PL 96-302, approved July 2, 1980 (94 Stat. 833). Title II of PL 96-302 may be cited as the "Small Business Development Center Act of 1980" per § 201 of PL 96-302. Both §§ 201 and 202 of Title II, PL 96-302, which provide for SBDCs and add new § 21, are repealed effective Oct. 1, 1990, per § 4 of PL 98-395, approved Aug. 21, 1984 (98 Stat. 1366). Previously, the repealed section was effective Oct. 1, 1984 (§ 204 of PL 96-302, *supra*), later made effective Jan. 1, 1985, by PL 98-177, approved Nov. 29, 1983 (97 Stat. 1125), and further extended by § 4 of PL 98-395, *supra*, to Oct. 1, 1990. Note: PL 98-8 approved March 24, 1983, Emergency Jobs Appropriation (97 Stat. 13), provided:

"Developing Parks and Recreation Areas

An additional amount of \$50,000,000 to remain available until expended, is appropriated for "Salaries and expenses", Small Business Administration to be available only for grants for resources development programs pursuant to section 21(a)(1) of the Small Business Act; notwithstanding any other provision of law including any contained herein, such sum shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the average of the number of unemployed individuals who reside in each such area as compared to the total number of unemployed individuals in all of the States, the District of Columbia and Puerto Rico during the fourth quarter of calendar year 1982; upon receipt of a certification, which the Administrator deems appropriate from the Governor of any State or Puerto Rico or the Mayor of the District of Columbia, the grant to that area may be made (sic) immediately, and an expedited review and approval of any rules, regulations or procedures is hereby authorized and shall be completed by April 15, 1983."

For language affecting SBDCs in appropriations statutes, see page 601 of this Handbook.

⁴²⁵References to women's business centers in this paragraph were added by § 502(a)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622).

natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises; management and technical assistance regarding small business participation in international markets, export promotion and technology transfer, delivery or distribution of such services and information; and providing access to business analysts who can refer small business concerns to available experts: Provided,⁴²⁶ That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 29 as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 29 to provide services to the small business community. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.⁴²⁷

(2) The Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State and local agencies and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy and trade data collection programs of particular utility for small businesses.

(3) The Small Business Development Center Program shall be under the general management and oversight of the Administration,⁴²⁸ for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration.

Cooperative
agreement.

(A)⁴²⁹ Small business development centers are authorized to form
an

⁴²⁶Proviso added by § 6 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2142).

⁴²⁷Last sentence in subsection 21(a)(1) and all of subsections 21(a)(3) through 21(a)(5) substituted by § 2 of PL 98-395, approved August 21, 1984, Small Business Development Center Act of 1984 (98 Stat. 1366). Clause in 21(a)(1) "management ... and technology transfer" added by subsection 8006(b)(1) of PL 100-418, approved August 23, 1988 (102 Stat. 1557). Subsections 21(a)(3) through 21(a)(5) renumbered and new subsection 21(a)(2) inserted by subsection 8006(b)(2) of PL 100-418.

⁴²⁸ Language following the footnote signal was added by § 502(a)(2)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622). Former language read as follows: ", but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties".

⁴²⁹Subparagraphs (A) and (B) added by § 223(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1000). Section provides:

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Not later than 180 days after the date of enactment of this Act, the Administrator of the Small Business shall submit to the Committees on Small Business and the committees on Appropriations of the Senate and the House of Representatives, proposed regulations for the Small Business Development Center Program authorized by section 21 of the Small Business Act (15 U.S.C. 648).

The last sentence of section 223(b), which prohibited the Agency from publishing proposed regulations in the Federal Register, was deleted by § 9(c) of PL 103-81, approved August 13, 1993 (107 Stat. 783).

Section 302 of P.L. 106-50, approved August 17, 1999 (113 Stat. 242), provides:

Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans affairs, the Administrator of the Small Business Administration, and the head of the association formed pursuant to section 21(a)(3)(A) of the Small Business Act shall enter into a memorandum of understanding with respect to entrepreneurial assistance to veterans, including service-disabled veterans, through Small Business Development Centers (described in section 21 of the Small Business Act (15 USC 648)) and facilities of the Department of Veterans Affairs. Such assistance shall include the following:

- (1) Conducting of studies and research, and the distribution of information generated by such studies and research, on the formation, management, financing, marketing, and operation of small business concerns by veterans.
- (2) Provision of training and counseling to veterans concerning the formation, management, financing, marketing, and operation of small business concerns.
- (3) Provision of management and technical assistance to the owners and operators of small business concerns regarding international markets, the promotion of exports, and the transfer of technology.
- (4) Provision of assistance and information to veterans regarding procurement opportunities with Federal, State, and local agencies, especially such agencies funded in whole or in part with Federal funds.
- (5) Establishment of an information clearinghouse to collect and distribute information, including by electronic means, on the assistance programs of Federal, State, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mail and electronic addresses, and contracting and subcontracting opportunities.
- (6) Provision of Internet or other distance learning academic instruction for veterans in business subjects, including accounting, marketing, and business fundamentals.
- (7) Compilation of a list of small business concerns owned and controlled by service-disabled veterans that provide products or services that could be procured by the United States and delivery of such list to each department and agency of the United States. Such list shall be delivered in hard copy and electronic form and shall include the name and address of each such small business concern and the products or services that it provides.

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association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing the annual scope of activities pursuant to this section, (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers.

(B) Provisions governing audits, cost principles and administrative requirements for Federal grants, contracts and cooperative agreements which are included in uniform requirements of Office of Management and Budget (OMB) Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations.

(C)⁴³⁰ On an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National and a State basis.

(4)⁴³¹ SMALL BUSINESS DEVELOPMENT CENTER PROGRAM
LEVEL.--

(A) IN GENERAL.--The Administration shall require as a

Non-federal
additional
amount.

Not later than 180 days after the date of enactment of this Act, the Administrator of the Small Business shall submit to the Committees on Small Business and the committees on Appropriations of the Senate and the House of Representatives, proposed regulations for the Small Business Development Center Program authorized by section 21 of the Small Business Act (15 U.S.C. 648).

The last sentence of section 223(b), which prohibited the Agency from publishing proposed regulations in the Federal Register, was deleted by § 9(c) of PL 103-81, approved August 13, 1993 (107 Stat. 783).

⁴³⁰ New subparagraph 21(a)(3)(C) added by § 502(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622).

⁴³¹ Paragraph 21(a)(4) rewritten by § 402 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4190). For legislative history of prior paragraph 21(a)(4), see previous edition of this handbook. The text of former § 21(a)(4) is reprinted below:

Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: Provided. That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: Provided further. That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus \$100,000 for each State, but no State shall receive less than \$200,000.

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condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(B) RESTRICTION.--The matching amount described in subparagraph (A) shall not include any indirect costs or in-kind contributions derived from any Federal program.

Matching
amount
restrictions.

(C) NATIONAL PROGRAM.--

(i)⁴³² IN GENERAL--

Grant
amounts.

(I) GRANT AMOUNT - Subject to subclauses (II) and (III), the amount of a grant received by a State under this section shall be equal to the greater of \$500,000, or the sum of--

(aa) the State's pro rata share of the national program, based upon the population of the State as compared to the total population of the United States; and

(bb) \$300,000 in fiscal year 1998, \$400,000 in fiscal year 1999, and \$500,000 in each fiscal year thereafter.

(II) PRO RATA REDUCTIONS - If the amount made available to carry out this section for any fiscal year is insufficient to carry out subclause (I)(bb), the Administration shall make pro rata reductions in the amounts otherwise payable to States under subclause (I)(bb).

(III) MATCHING REQUIREMENT - The amount of a grant received by a State under this section shall not exceed the amount of matching funds from sources other than the Federal Government provided by the State under subparagraph (A).

⁴³² Section 21(a)(4)(C)(i) rewritten by § 502(a)(3)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622). Text of former clause (i) is reprinted below:

(i) IN GENERAL.--Except as provided in clause (ii), no State receiving funds under this section shall receive a grant that exceeds--

(I) for fiscal year 1995, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and \$125,000; or

(II) in each succeeding fiscal year, the sum of such State's pro rata share of a national program based upon population of the State as compared to the total population in the United States, and \$200,000.

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(ii) EXCEPTION.--Grants provided to a small business development center by the Administration or another agency to carry out the provisions of subsection (c)(3)(G) shall not be included in the calculation of maximum funding of a small business development center.

(iii)⁴³³ NATIONAL PROGRAM - There are authorized to be appropriated to carry out the national program under this section--

- (I) \$85,000,000 for fiscal year 1998;
- (II) \$90,000,000 for fiscal year 1999; and
- (III) \$95,000,000 for fiscal year 2000 and each fiscal

year thereafter.

The amount for which a small business development center is eligible under this paragraph shall be based upon the amount of the national program in effect as of the date for commencement of performance of the small business development center's grant.

(5)⁴³⁴ FEDERAL CONTRACTS WITH SMALL BUSINESS

Federal contract with SBDCs.

⁴³³ Section 21(a)(4)(C)(iii) rewritten by § 502(a)(3)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2623). Text of former § 21(a)(4)(C)(iii) is reprinted below:

- (iii) AMOUNT.--The amount of the national program shall be--
 - (I) \$70,000,000 through September 30, 1996;
 - (II) \$77,500,000 from October 1, 1996 through September 30, 1997; and
 - (III) \$85,000,000 beginning October 1, 1997.

⁴³⁴Section 21(a)(5) rewritten by § 403 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4191). Text of former § 21(a)(5) is reprinted below:

In lieu of the matching funds required in paragraph (3), the Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 per centum cash and not more than 50 per centum of indirect costs and in-kind contributions as follows:

- (A) for grants for performance commencing on or after October 1, 1987 if the applicant is located in a State which received its grant for performance under this section on or before August 1, 1984;
- (B) for grants for performance commencing on or after October 1, 1988 if the applicant is located in a State which receives its initial grant for performance under this section commencing after August 1, 1984 and prior to October 1, 1986; and
- (C) for grants for performance commencing on or after October 1, 1986 if the applicant is located in a State which receives its initial grant for performance under this section commencing after October 1, 1986:

DEVELOPMENT CENTERS.--

(A) **IN GENERAL.**--Subject to the conditions set forth in subparagraph (B), a small business development center may enter into a contract with a Federal department or agency to provide specific assistance to small business concerns.

(B) **CONTRACT PREREQUISITES.**--Before bidding on a contract described in subparagraph (A), a small business development center shall receive approval from the Associate Administrator of the small business development center program of the subject and general scope of the contract. Each approval under subparagraph (A) shall be based upon a determination that the contract will provide assistance to small business concerns and that performance of the contract will not hinder the small business development center in carrying out the terms of the grant received by the small business development center from the Administration.

(C) **EXEMPTION FROM MATCHING REQUIREMENT.**--A contract under this paragraph shall not be subject to the matching funds or eligibility requirements of paragraph (4):

(D) **ADDITIONAL PROVISION.**--Notwithstanding any other provision of law, a contract for assistance under this paragraph shall not be applied to any Federal department or agency's small business, woman-owned business, or socially and economically disadvantaged business contracting goal under section 15(g).

(6)⁴³⁵ Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist--

(A) with the development and enhancement of exports by small business concerns;

(B) in technology transfer; and

(C)⁴³⁶ with outreach, development, and enhancement of minority-owned small business startups or expansions, HUBZone small business concerns, veteran-owned small business startups or expansions, and women-owned small business startups or expansions, in communities impacted by base closings or military or corporate downsizing,

Provided, That this matching amount shall not include any indirect costs or in-kind contributions derived from any Federal program: Provided further, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or \$200,000 whichever is greater.

⁴³⁵Paragraph 21(a)(6) added by subsection 8006(b)(3) of PL 100-418, approved August 23, 1988 (102 Stat. 1557).

⁴³⁶Subparagraph 21(a)(6)(C) added by § 502(a)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2623).

or in rural or underserved communities;

as provided under subparagraphs (B) through (G) of subsection (c)(3). Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a \$15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be \$100,000.

(b)⁴³⁷ (1) . Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

(2) . An applicant may apply to participate in the program by submitting to the Administration for approval a plan naming those authorized in subsection (a) to participate in the program, the geographic area to be served, the services that it would provide, the method for delivering services, a budget, and any other information and assurances the Administration may require to insure that the applicant will carry out the activities eligible for assistance. The Administration is authorized to approve, conditionally approve or reject a plan or combination of plans submitted. In all cases, the Administration shall review plans for conformity with the plan submitted pursuant to paragraph (1) of this subsection, and with a view toward providing small business with the most comprehensive and coordinated assistance in the State or part thereof to be served.

Plan,
submission
to SBA.

Review.

(3) At the discretion of the Administration, the Administration is authorized to permit a small business development center to provide advice, information and assistance, as described in subsection (c), to small businesses located outside the State, but only to the extent such businesses are located within close geographical proximity to the small business development center, as determined by the Administration.

Assistance to
out-of-state
businesses.

(c) (1) Applicants receiving grants under this section shall assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations.

Problem-
solving
assistance.

⁴³⁷PL 98-395, approved Aug. 21, 1984 (98 Stat. 1366), struck prior limitation to fiscal years 1981-1983, and made applicability unlimited.

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small business which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have --

Devel
cent
exten
servi
ces.

(A)⁴³⁸ a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

Staff and access
requirements.

(B) access to business analysts to counsel, assist, and inform small business clients;

(C) access to technology transfer agents to provide state of art technology to small businesses through coupling with national and regional technology data sources;

(D) access to information specialists to assist in providing information searches and referrals to small business;

(E) access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises; and

(F) access to laboratory and adaptive engineering facilities.

(3) Services provided by a small business development center shall include, but shall not be limited to --

Services
provided.

(A) furnishing one-to-one individual counseling to small businesses, including—

(i)⁴³⁹ working with individuals to increase awareness of basic credit practices and credit requirements;

(ii) working with individuals to develop business plans, financial packages, credit applications, and contract proposals;

(iii) working with the Administration to develop and

⁴³⁸Sentence following footnote signal inserted in lead-in of par. (2) and substituted for prior language in subpar. (2)(A). Prior language omitted expenditure authority for staff director. See §§ 2(4) and (5) of PL 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

⁴³⁹ Clauses (i) through (iv) were added by § 502(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2623).

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provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

(iv) working with individuals referred by the local offices of the Administration and Administration participating lenders;

(B)⁴⁴⁰ assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including--

(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

(ii) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;

(C)⁴⁴¹ in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center and the Administration⁴⁴² may work in cooperation with the State to establish a State international trade center for these purposes;

Export
assistance.

(D)⁴⁴³ developing a program in conjunction with the Export-Import

⁴⁴⁰Subparagraph 21(c)(3)(B) rewritten by subsection 8006(b)(4) of PL 100-418, approved August 23, 1988 (102 Stat. 1558). Prior subparagraph (B) read: "assisting in technology transfer, research, and coupling from existing sources to small businesses".

⁴⁴¹Subparagraphs 21(c)(3)(C) through (H) redesignated as 21(c)(3)(H) through (M) respectively, and new subparagraphs 21(c)(3)(C) through (G) added by subsection 8006(b)(5) of PL 100-418, approved August 23, 1988 (102 Stat. 1558).

⁴⁴²Phrase "and the Administration" added by § 502(b)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat.2623).

⁴⁴³Former subparagraph 21(c)(3)(D) deleted by § 212(1) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 998), and subparagraphs (E)-(G) redesignated as (D)-(F). Text of former subparagraph 21(c)(3)(D):

assisting small businesses in developing and implementing marketing and production strategies that will enable them to better compete within the domestic market

Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

(E) working closely with the small business community, small business consultants, State agencies, universities and other appropriate groups to make translation services more readily available to small business firms doing business, or attempting to develop business, in foreign markets;

(F) in providing assistance under this subsection, applicants shall cooperate with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;

(G)⁴⁴⁴ assisting small businesses to develop and implement strategic business plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program--

(i) by developing broad economic assessments of the adverse impacts of--

(I) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to such facility or to the military and civilian personnel currently stationed or working at such facility; and

(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

(iv) by assisting small business concerns to develop and implement an individualized transition business plan.

⁴⁴⁴New subparagraph (G) added by § 212(3) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 998).

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(H) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(I) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(J) providing and maintaining a comprehensive library that contains current information and statistical data needed by small businesses;

(K) maintaining a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associations in order to help address the various needs of the small business community;

(L) conducting in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality;

(M)⁴⁴⁵ in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

Rural small
business,
export
assistance.

(N) assisting rural small businesses--

(i) in developing marketing and production strategies that will enable them to better compete in the domestic market--

(ii) by providing technical assistance needed by rural small businesses;

(iii) by making available managerial assistance to rural small business concerns; and

(iv) by providing information and assistance in obtaining

⁴⁴⁵Subparagraph 21(c)(3)(M) redesignated as 21(c)(3)(P) and new subparagraphs 21(c)(3)(M) through (O) added by § 303 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2828).

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financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by--

(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists;

(P) maintaining lists of local and regional private consultants to whom small businesses can be referred;

(Q)⁴⁴⁶ providing information to small business concerns regarding compliance with regulatory requirements;

(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a)⁴⁴⁷ of the Small Business Regulatory Enforcement Fairness Act of 1996;

(S)⁴⁴⁸ providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the Export Assistance Center program; and

(T)⁴⁴⁹ providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2000.

Drug-free
workplace,
assistance.

(4)⁴⁵⁰ A small business development center shall continue to upgrade and

⁴⁴⁶Subparagraphs (Q) and (R) added by § 214(a)(3) of P.L. 104-121, approved March 29, 1996 (110 Stat. 859).

⁴⁴⁷The section referred to, § 312(a), should be § 212(a) of P.L. 104-121.

⁴⁴⁸ New subparagraph 21(c)(3)(S) added by § 506(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624). Subsection 506(b) of the same law provides: "(b) AUTHORIZATION OF APPROPRIATIONS - There is authorized to be appropriated to carry out section 21(c)(3)(S) of the Small Business Act (15 U.S.C. 648(c)(3)(S)), as added by this section, \$1,500,000 for each fiscal years 1998 and 1999."

⁴⁴⁹New subparagraph 21(c)(3)(T) added by § 905 of P.L. 105-277, approved Oct. 21, 1998 (112 Stat. 2681-813).

⁴⁵⁰ The formerly undesignated material following subparagraph 21(c)(3)(R) was designated as paragraph 21(c)(4) by §

modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(5) In addition to the methods prescribed in section 21(c)(2), a small business development center shall utilize and compensate as one of its resources qualified small business vendors, including but not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services as described in this subsection to small businesses on behalf of such small business development center.

Qualified small
business vendors.

(6)⁴⁵¹ In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a), or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under subsection (a)(1) to such center or the date the Administration notifies the grantee funded under subsection (a)(1) that funds are available for grant applications pursuant to subsection (a)(6), whichever date occurs last, the Administration may make grants to a non-profit entity in that State to carry out the activities specified in paragraph (6) of subsection (a). Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a). Such grants shall be effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a).

Grants to non-
profit entity.

(7) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(8) The Associate Administrator for Small Business Development Centers,⁴⁵² in consultation with the Small Business Development Centers, shall develop and implement an information sharing system.⁴⁵³ Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall

Information
sharing system.

Grants or
cooperative
agreements.

502(b)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624). Section 502(b)(3) of the same public law redesignated paragraphs 21(c)(4) through (7) as (5) through (8).

⁴⁵¹New paragraphs 21(c)(5) through 21(c)(7) added by § 8006(b)(6) of PL 100-418, approved August 23, 1988 (102 Stat. 1559). The phrase "or the date ... occurs last" inserted by § 135(3) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3007). Paragraphs 21(c)(4) through (7) were redesignated 21(c)(5) through (8) by § 502(b)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624).

⁴⁵²Substituted for "Deputy Associate Administrator of the Small Business Development Center program" by § 106(a)(2)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-731).

⁴⁵³The following 3 sentences added by § 9(a) of P.L. 103-81, approved August 13, 1993 (107 Stat. 783).

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(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

(B) provide information central to technology transfer.

(d)⁴⁵⁴ Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small businesses located within the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performances of small businesses within the State.

(e) Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administration in developing and establishing programs to support small business development centers by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. The Administration is authorized to reimburse the laboratories for such services.

Federal
laboratories.

(f)⁴⁵⁵ The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers.

National
Science
Foundation

(g) The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in this program. The National Aeronautics and Space Administration shall report annually on the performance of such industrial application centers with recommendations to the Administration and the Congress on how such industrial application centers can be strengthened and expanded. The National Aeronautics and Space Administration shall include in its report to Congress information on the ability of industrial application centers to interact with the Nation's small business community and recommendations to the Administration on continued funding.

NASA and
industrial
application
centers.

(h)⁴⁵⁶ ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS

⁴⁵⁴Subsections 21(d) through (k) redesignated as 21(e) through (l), respectively, and new § 21(d) added by § 8006(b)(7) of PL 100-418, approved August 23, 1988 (102 Stat. 1559).

⁴⁵⁵Subsection (f) substituted for prior language requiring NSF and its innovation centers to cooperate with SBDCs and report with recommendations annually to SBA and Congress on strengthening and funding of innovation centers. Section 2(6) of PL 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

⁴⁵⁶Subsection 21(h) rewritten by § 106(a)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-731). Text of former § 21(h) is reprinted below:

(1) The Administrator shall appoint an Associate Administrator for Small Business Development Centers who

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DEVELOPMENT CENTERS.-

(1) APPOINTMENT AND COMPENSATION.-The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS-17 of the General Schedule.

Associate Administrator for SBDC.

(2) DUTIES.-

Duties.

(A) IN GENERAL.-The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

(B) CONSULTATION REQUIREMENTS.-In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) and Administration officials in areas served by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of such Administration officials.

(i) (1) There is established a National Small Business Development Center Advisory Board (herein referred to as "Board") which shall consist of nine members appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be

National SBDC Advisory Board, establishment.

shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS-17 of the General Schedule.

(2) The sole responsibility of the Deputy Associate Administrator for Management Assistance shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Deputy Associate Administrator for Management Assistance shall confer with and seek the advice and counsel of the Board in carrying out the responsibilities described in this subsection.

SMALL BUSINESS ACT

from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose terms shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Associate Administrator for Small Business Development Centers⁴⁵⁷ in carrying out the duties described in this section. The Board shall meet at least semiannually⁴⁵⁸ and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of their per diem equivalent of the highest rate of pay for individuals occupying the position under GS-18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

(j) (1) Each small business development center shall⁴⁵⁹ establish an advisory board. Advisory board.

(2) Each small business development center advisory board shall elect a chairman and advise, counsel, and confer with the director of the small business development center on all policy matters pertaining to the operation of the small business development center, including who may be eligible to receive assistance from, and how local and regional private consultants may participate with the small business development center.

(k)⁴⁶⁰ PROGRAM EXAMINATION AND CERTIFICATION.--

(1) EXAMINATION.--Not later than 180 days after the date of enactment of this subsection, the Administration shall develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to

SBDC
examination.

⁴⁵⁷Substituted for "Deputy Associate Administrator for Management Assistance" by § 106(a)(2)(B) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732).

⁴⁵⁸"Semiannually" substituted for "quarterly" by § 2(7) of PL 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

⁴⁵⁹"Shall" substituted for "may" by § 2(8) of PL 98-395, supra.

⁴⁶⁰Subsection (k) rewritten by § 404 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4191). Text of former section 21(k) is reprinted below:

Within six months of the date of enactment of the Small Business Development Center Improvement Act of 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis.

this section.

(2) **CERTIFICATION.**—The Administration may provide financial support, by contract or otherwise, to the association authorized by subsection (a)(3)(A) for the purpose of developing a small business development center certification program.

SBDC
certification.

(3)⁴⁶¹ **EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.**

(A) **IN GENERAL.**—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).

(B) **CERTIFICATION REQUIREMENT.**—After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the certification program conducted pursuant to this subsection, except that the Associate Administrator for Small Business Development Centers may waive such certification requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain certification.

Certification
requirement.

(l)⁴⁶² **CONTRACT AUTHORITY.**—The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration [sic] has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5, United States Code. If any contract or cooperative

Contract
authority.

⁴⁶¹Paragraph 21(k)(3) rewritten by § 106(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). Text of former subsection 21(k) is reprinted below:

EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).

⁴⁶²Subsection 21(l) rewritten by § 106(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). Text of former § 21(l) is reprinted below:

The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefor and affording the applicant an opportunity for a hearing, appeal or other administrative proceeding under the provisions of the Administrative Procedures Act.

agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.⁴⁶³

(m)⁴⁶⁴ PROHIBITION ON CERTAIN FEES - A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

Prohibition on certain fees.

§ 21A. [Repealed].⁴⁶⁵

Office of International Trade.
15 USC 649.

§ 22⁴⁶⁶(a) There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section.

⁴⁶³ The last sentence in section 21(l) was added by § 502(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624).

⁴⁶⁴ New subsection 21(m) was added by § 502(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624).

⁴⁶⁵ Section 21A added by § 9(a) of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2144). Section 9(b) of P.L. 101-515 provides that: "There is authorized to be appropriated to the Small Business Administration for each of fiscal years 1991 and 1992, \$1,200,000 to carry out the terms of section 21A of the Small Business Act". Section 21A is repealed effective Oct. 1, 1992, per § 609(e) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 826). The same section provides that "[n]otwithstanding any other law, no funds shall be appropriated to carry out section 21A of the Small Business Act after September 30, 1991." See section 28, added by § 609(d) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 825), for text of the Pilot Technology Access Program. Text of repealed § 21A is reprinted below:

SMALL BUSINESS DEVELOPMENT CENTER TECHNICAL ASSISTANCE PROGRAM.

(a) The Administration is authorized to make grants to establish pilot programs at 5 Small Business Development Centers in order to increase access by small businesses in each center's service area to online data bases. The purpose of this program shall be to provide small businesses, in states selected to participate in this demonstration program, with improved online access to public and private technology, services and expertise, so as to accelerate the transfer of technology and expertise to small businesses and to improve the productivity and economic competitiveness of these small businesses.

(b) Any Small Business Development Center which is funded by the Administration is eligible to receive an additional grant to provide access to online data bases as described in subsection (a) providing it contributes at least a fifty percent matching contribution.

(c) The grants authorized by this section must be used to--

- (1) defray all or part of the cost of accessing data bases from private vendors for a limited period of time,
- (2) demonstrate to small businesses the benefits of accessing such data bases, and
- (3) train small businesses to use such data bases to access technical information and services.

⁴⁶⁶ New § 22 added by § 113 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.

(b)⁴⁶⁷ The Office, working in close cooperation with the Department of Commerce and other relevant Federal agencies, Small Business Development Centers engaged in export promotion efforts, regional and local Administration offices, the small business community, and relevant State and local export promotion programs, shall--

(1) assist in developing a distribution network for existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs through use of the Administration's regional and local offices and the Small Business Development Center network;

(2) assist in the aggressive marketing of these programs and the dissemination of marketing information, including computerized marketing data, to the small business community; and

(3) give preference in hiring or approving the transfer of any employee into the Office or to a position described in paragraph (8) below to otherwise qualified applicants who are fluent in a language in addition to English. Such employees shall accompany foreign trade missions if designated by the director of the Office and shall be available as needed to translate documents, interpret conversations and facilitate multilingual transactions including providing referral lists for translation services if required.

Hiring
preference.

(c) The Office shall promote sales opportunities for small business goods and services abroad. To accomplish this objective the office shall --

(1)⁴⁶⁸ in cooperation with the Department of Commerce, other relevant agencies, regional and local Administration offices, the Small Business Development Center network, and State programs, develop a mechanism for (A) identifying sub-sectors of the small business community with strong export potential; (B) identifying areas of demand in foreign markets; (C) prescreening foreign buyers for commercial and credit purposes; and (D) assisting in increasing international marketing by disseminating relevant information regarding market leads, linking potential sellers and buyers, and catalyzing the formation of joint ventures, where appropriate;

Cooperation with
other agencies.

(2) in cooperation with the Department of Commerce, actively assist small businesses in the formation and utilization of export trading companies, export management companies and research and development pools authorized under section 9 of this Act;

(3) work in conjunction with other Federal agencies, regional and local offices of the Administration, the Small Business Development Center network, and the

⁴⁶⁷Subsection 22(b) redesignated as 22(c) and new § 22(b) added by § 8003(1) of PL 100-418, approved August 23, 1988 (102 Stat. 1554).

⁴⁶⁸Paragraphs 22(c)(1) through (3) redesignated as 22(c)(6) through (8) respectively, and new paragraphs 22(c)(1) through (5) added by § 8003(2) of PL 100-418, approved August 23, 1988 (102 Stat. 1554).

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private sector to identify and publicize existing translation services, including those available through colleges and universities participating in the Small Business Development Center Program;

(4) work closely with the Department of Commerce and other relevant Federal agencies to--

(A) collect, analyze and periodically update relevant data regarding the small business share of United States exports and the nature of State exports (including the production of Gross State Produce figures) and disseminate that data to the public and to Congress;

(B) make recommendations to the Secretary of Commerce and to Congress regarding revision of the SIC codes to encompass industries currently overlooked and to create SIC codes for export trading companies and export management companies;

(C) improve the utility and accessibility of existing export promotion programs for small businesses; and

(D) increase the accessibility of the Export Trading Company contact facilitation service;

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

(6) provide small businesses with access to current and complete export information by --

Export
information.

(A) making available, at the Administration's regional offices through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

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

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

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

Trade fairs,
shows,
mission

(7) encourage through cooperation with the Department of Commerce,

SMALL BUSINESS ACT

greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce; and

(8) facilitate decentralized delivery of export information and assistance to small businesses by assigning full-time export development specialists to each Administration regional office and assigning primary responsibility for export development to one person in each district office. Such specialists shall --

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

(B) maintain a current directory of all programs which provide export information and assistance to small businesses within the region;

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

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

(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine small businesses' needs for export information and assistance.

(d)⁴⁶⁹ The Office shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop a program through which export specialists in the regional offices of the Administration, regional and local loan officers, and Small Business Development Center personnel can facilitate the access of small businesses to relevant export financing programs of the Export-Import Bank of the United States and to export and pre-export financing programs available from the Administration and the private sector. To accomplish this goal, the Office shall work in cooperation with the Export-Import Bank and the small business community, including small business trade associations, to--

Export
financing
programs.

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

(2) identify financing available under various Export-Import Bank programs, and aggressively market those programs to small businesses;

⁴⁶⁹New subsections 22(d) through (f) added by § 8003(3) of PL 100-418, approved August 23, 1988 (102 Stat. 1555).

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

(4) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under this Act, in export finance; and

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

(e) The Office shall--

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

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

(f) The Office shall report to the Committees on Small Business of the House of Representatives and the Senate on an annual basis as to its progress in implementing the requirements under this section.

Report to
Congress.

(g) The Office, in cooperation, where appropriate, with the Division of Economic Research of the Office of Advocacy, and with other Federal agencies, shall undertake studies regarding the following issues and shall report to the Committees on Small Business of the House of Representatives and the Senate, and to other relevant Committees of the House and Senate within 6 months after the date of enactment of the Small Business International Trade and Competitiveness Act with specific recommendations on--

Studies.
Report to
Congress.

(1) the viability and cost of establishing an annual, competitive small business export incentive program similar to the Small Business Innovation Research program and alternative methods of structuring such a program;

(2) methods of streamlining trade remedy proceedings to increase access for, and reduce expenses incurred by, smaller firms;

(3) methods of improving the current small business foreign sales corporation tax incentives and providing small businesses with greater benefits from this initiative;

(4) methods of identifying potential export markets for United States small businesses; maintaining and disseminating current foreign market data; and devising a comprehensive export marketing strategy for United States small business goods and services, and shall include data on the volume and dollar amount of goods and services,

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identified by type, imported by United States trading partners over the past 10 years; and

(5) the results of a survey of major United States trading partners to identify the domestic policies, programs and incentives, and the private sector initiatives, which exist to encourage the formation and growth of small business.⁴⁷⁰

Survey of
trading partners.

§ 23.⁴⁷¹ Notwithstanding any other provision of law, rule, or regulations, for purposes of section 7(b) of this Act (15 U.S.C. 636(b)), the Administrator shall, with respect to small business concerns involved in the fishing industry, treat the recent El Nino-related ocean conditions as a disaster under such subsection:

15 USC 650.

(1) disaster loan assistance shall be provided to the fishing industry pursuant to paragraph (2) of such section --

(A) the term "recent El Nino-related ocean conditions" means the ocean conditions (including high water temperatures, scarcity of prey, and absence of normal upwellings) which occurred in the eastern Pacific Ocean off the west coast of the North American Continent during the period beginning with June 1982 and ending at the close of December 1983, and which resulted from the climatic conditions occurring in the Equatorial Pacific during 1982 and 1983;

"Recent El-Nino-
related ocean
conditions."

(B) the term "fishing industry" means any trade or business involved in (i) the catching, taking, or harvesting of fish (whether or not sold on a commercial basis), (ii) any operation at sea or on land, in preparation for, or substantially dependent upon, the catching, taking, or harvesting of fish, and (iii) the processing or canning

"Fishing
industry."

⁴⁷⁰Section 8009 of PL 100-418 provides that:

Within one year after the date enactment of this Act, the Administrator of the Small Business Administration shall submit a written report to the Committees on Small Business of the House of Representatives and the Senate, prepared by the Administration in conjunction with the Bureau of Census and in cooperation with other relevant agencies, that would--

- (1) analyze to the extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within the United States subcontractor tier and to the extent that such data is not available determine methods by which such data may be collected;
- (2) assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and
- (3) make recommendations as to changes in Government policy that would improve the competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

⁴⁷¹New § 23 added by § 111A(a) of PL 98-473, approved Oct. 12, 1984 (98 Stat. 1956).

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of fish (including storage, refrigeration and transportation of fish before processing or canning); and

(C) the term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds; and

"Fish."

(2) for purposes of paragraphs (2) through (4) of subsection 7(b) of this Act, eligibility of individual applicants shall not in any way be dependent upon the number of disaster victims in any county or other political subdivision.

§ 24.⁴⁷²(a) The Administrator is authorized to make grants to or to enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant (or amendment or modification thereof) under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from sources other than the Federal Government. Such non-Federal money may include in-kind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: Provided, That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum, and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made⁴⁷³.

Tree planting.
15 USC 651.

(b) In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

(c) To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment

⁴⁷²Section 24 added by § 4 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2140).

⁴⁷³The clause following the comma was added by § 201 of P.L. 103-211, approved Feb 12, 1994 (108 Stat. 3). Section 202 of P.L. 103-211 provides:

Of the \$258,900,000 made available under the heading "Small Business Administration, Salaries and Expenses" in Public Law 103-121, the \$18,000,000 included in that total amount and designated under such heading to carry section 24 of the Small Business Act, as amended, shall remain available until September 30, 1995.

opportunities in local communities, grantees are directed to utilize small business contractors or concerns in connection with the program established by this section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

(d) For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

(e) There are authorized to be appropriated to carry out the objectives of this section, \$15,000,000 for fiscal year 1991 and \$30,000,000 for each of the fiscal years 1992 through 1994, and all of such sums may remain available until expended.

Authorization.

(f) Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after the date of enactment of this section and shall publish final rules and regulations within one hundred and twenty days of the date of enactment of this section.

(g) As used in this section:

(1) the term "local government" includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities;

"Local government."

(2) the term "planting" includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and

"Planting."

(3) the term "State" includes any agency thereof.

"State."

(h) The Administrator shall submit annually to the President and the Congress a report on activities within the scope of this section.

Report to the President and Congress.

§ 25.⁴⁷⁴(a) There is hereby established a Central European Small Business Enterprise Development Commission (hereinafter in this section referred to as the "Commission"). The Commission shall be comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities, and the Association of Small Business Development Centers.

Central European Enterprise Development.
15 USC 652.

(b) The Commission shall develop in Czechoslovakia, Poland and Hungary (hereinafter referred to as "designated Central European countries") a self-sustaining system to provide management and technical assistance to small business owners.

"Designated Central European countries."

⁴⁷⁴Section 25 added by § 7 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2142).

(1) Not later than 90 days after the effective date of this section, the Commission, in consultation with the Agency for International Development, shall enter a contract with one or more entities to--

(A) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

(B) evaluate appropriate Small Business Development Center-programs [sic] which might be replicated in order to meet the needs of each of such countries; and

(C) identify and assess the capability of educational institutions in each such country to develop a Small Business Development Center type program.

(2) Not later than 18 months after the effective date of this section, the Commission shall review the recommendations submitted to it and shall formulate and contract for the establishment of a three-year management and technical assistance demonstration program.

(c) In order to be eligible to participate, the educational institution in each designated Central European country shall--

(1) obtain the prior approval of the government to conduct the program;

(2) agree to provide partial financial support for the program, either directly or indirectly, during the second and third years of the demonstration program; and

(3) agree to obtain private sector involvement in the delivery of assistance under the program.

(d) The Commission shall meet and organize not later than 30 days after the date of enactment of this section.

(e) Members of the Commission shall serve without pay, except they shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their functions in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

Commission,
members.

[5 USC 5703].

(f) Two Commissioners shall constitute a quorum for the transaction of business. Meetings shall be at the call of the Chairperson who shall be elected by the Members of the Commission.

(g) The Commission shall not have any authority to appoint staff, but upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to

assist in carrying out the Commission's functions under this section without regard to section 3341 of title 5 of the United States Code. The Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may request. [5 USC 3341].

(h) The Commission shall report to Congress not later than December 1, 1991, and annually thereafter, on the progress in carrying out the provisions of this section.

(i) There are hereby authorized to be appropriated to the Small Business Administration the sum of \$3,000,000 for fiscal year 1991, \$5,000,000 for fiscal year 1992, \$2,000,000 for each of fiscal years 1993 and 1994, and \$1,000,000 for fiscal year 1995⁴⁷⁵ to carry out the provisions of this section. Such sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.

Authorization.

§ 26.⁴⁷⁶(a) There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the "Office").

Office of Rural
Affairs.
15 USC 653.

(b) The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after the date of the enactment of this section.

(c) The Office shall--

Functions.

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

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

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

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

⁴⁷⁵Authorization for FY 1995 added by § 405 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192). Authorization changed from \$8,000,000 for FY 1993 to \$2,000,000 for each FY 1993 and 1994 by § 9(b) of P.L. 103-81, approved August 13, 1993 (107 Stat. 783).

⁴⁷⁶Section 26 added by § 302 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827).

(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.

§ 27.⁴⁷⁷ DRUG-FREE WORKPLACE DEMONSTRATION PROGRAM.

Drug-Free
Workplace.
15 USC 654.

(a) DEFINITIONS.—In this section:

(1) DRUG-FREE WORKPLACE PROGRAM.—The term “drug-free workplace program” means a program that includes—

“Drug-free
workplace
program.”

(A) a written policy, including a clear statement of expectations for workplace behavior, prohibitions against reporting to work or working under the influence of illegal drugs or alcohol, prohibitions against the use or possession of illegal drugs in the workplace, and the consequences of violating those expectations and prohibitions;

(B) drug and alcohol abuse prevention training for a total of not less than 2 hours for each employee, and additional voluntary drug and alcohol abuse prevention training for employees who are parents;

(C) employee illegal drug testing, with analysis conducted by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by the College of American Pathologists for forensic drug testing, and a review of each positive test result by a medical review officer;

(D) employee access to an employee assistance program, including confidential assessment, referral, and short-term problem resolution; and

(E) continuing alcohol and drug abuse prevention education.

⁴⁷⁷Section 27 completely rewritten by § 904 of P.L. 105-277, approved Oct. 21, 1998 (112 Stat. 2681-811). For Congressional findings and purposes, see page 1115 of this Handbook. Text of former § 27, added by § 310 of P.L. 101-574, is reprinted below:

(a) The Administration is authorized to make grants to conduct demonstration programs in 5 States in order to promote tourism activities delivered by small businesses. The purpose of the program shall be to demonstrate ways in which the economy in rural areas may be improved by encouraging tourism and its resulting increase in income and employment in rural areas. The Administration shall require as a condition of any grant under this section that the applicant also contribute to the demonstration program a sum equal to at least 25 percent of the amount of the funding requested from the Federal Government.

(b) There are authorized to be appropriated to carry out the provision of this section, \$1,000,000 for fiscal year 1992 and such sums may remain available until expended.

(c) Not later than February 1, 1993, the Administration shall submit to the President and the Congress a report on activities undertaken pursuant to this section.

(2) **ELIGIBLE INTERMEDIARY.**—The term “eligible intermediary” means an organization—

“Eligible intermediary.”

(A) that has not less than 2 years of experience in carrying out drug-free workplace programs;

(B) that has a drug-free workplace policy in effect;

(C) that is located in a State, the District of Columbia, or a territory of the United States; and

(D) the purpose of which is—

(i) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services;

(ii) to provide other forms of assistance and services to small business concerns.

(3) **EMPLOYEE.**—The term “employee” includes any—

“Employee.”

(A) applicant for employment;

(B) employee;

(C) supervisor;

(D) manager;

(E) officer of a small business concern who is active in management of the concern; and

(F) owner of a small business concern who is active in management of the concern.

(4) **MEDICAL REVIEW OFFICER.**—The term “medical review officer”—

“Medical review officer.”

(A) means a licensed physician with knowledge of substance abuse disorders; and

(B) does not include any—

(i) employee of the small business concern; or

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(ii) employee or agent of, or any person having a financial interest in, the laboratory for which the illegal drug test results are being reviewed.

(b) ESTABLISHMENT.—There is established a drug-free workplace demonstration program, under which the Administrator may make grants to, or enter into cooperative agreements or contracts with, eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to establish a drug-free workplace program.

(c) PRIVACY PROTECTION FOR EMPLOYEES PARTICIPATING IN A DRUG-FREE WORKPLACE PROGRAM.—Each drug-free workplace program established with assistance made available under this section shall—

Privacy protection.

(1) include, as reasonably necessary and appropriate, practices and procedures to ensure the confidentiality of illegal drug test results and of any participation by an employee in a rehabilitation program;

(2) prohibit the mandatory disclosure of medical information by an employee prior to a confirmed positive illegal drug test; and

(3) require that a medical review officer reviewing illegal drug test results shall report only the final results, limited to those drugs for which the employee tests positive, in writing and in a manner designed to ensure the confidentiality of the results.

(d) EVALUATION AND COORDINATION. Not later than 18 months after the date of enactment of the Drug-Free Workplace Act of 1998, the Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall—

(1) evaluate the drug-free workplace programs established with assistance made available under this section; and

(2) submit to Congress a report describing the results of the evaluation under paragraph (1).

(e) CONTRACT AUTHORITY.—In carrying out this section, the Administrator may—

Contract authority.

(1) contract with public and private entities to provide assistance related to carrying out the program under this section; and

(2) compensate those entities for provision of that assistance.

(f) CONSTRUCTION.—Nothing in this section may be construed to require an employer who attends a program offered by an intermediary to contract for any service offered by the intermediary.

(g) AUTHORIZATION.—

(1) **IN GENERAL.**—There is authorized to be appropriated to carry out this section, \$10,000,000 for fiscal years 1999 and 2000. Amounts made available under this subsection shall remain available until expended.

(2) **SMALL BUSINESS DEVELOPMENT CENTERS.**—Of the total amount made available under this subsection, not more than the greater of 10 percent or \$1,000,000 may be used to carry out section 21(c)(3)(T).

§ 28⁴⁷⁸ PILOT TECHNOLOGY ACCESS PROGRAM.

(a) The Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program, for making awards under this section to Small Business Development Centers (hereinafter in this section referred to as "Centers").

(b) The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of Centers to receive awards on the basis of—

(1) the ability of the applicant to carry out the purposes described in subsection (d) in a manner relevant to the needs of industries in the area served by the Center;

(2) the ability of the applicant to integrate the implementation of this program with existing Federal and State technical and business assistance resources; and

(3) the ability of the applicant to continue providing technology access after the termination of this pilot program.

(c) To be eligible to receive an award under this section, an applicant shall provide a matching contribution at least equal to that received under such award, not more than 50 percent of which may be waived overhead or in-kind contributions.

(d) Awards made under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

⁴⁷⁸Section 28, the Pilot Technology Access Program, added by § 609(d) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 825). A second § 28, Women's Demonstration Projects, was added by § 2 of PL 102-191, approved Dec. 5, 1991 (105 Stat. 1589); the second § 28 was renumbered as § 29 by § 411 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192).

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- (1) defraying the cost of access by small businesses to the data base services;
- (2) training small businesses in the use of the data base services; and
- (3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

(e) Awards previously made under section 21A of this Act may be renewed under this section.

(f) Two years after the date on which the first award was issued under section 21A of this Act, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate, an interim report on the implementation of the program under such section and this section, including the judgments of the participating Centers as to its effect on small business productivity and innovation.

GAO
report.

(g) Three years after such date, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science and Transportation of the Senate, a final report evaluating the effectiveness of the Program under section 21A and this section in improving small business productivity and innovation.

(h) There are authorized to be appropriated to the Small Business Administration \$5 million for each of fiscal years 1992 through 1995 to carry out this section, and such amounts may remain available until expended.

Authorization.

(i) Centers are encouraged to seek funding from Federal and non-Federal sources other than those provided for in this section to assist small businesses in the identification of appropriate technologies to fill their needs, the transfer of technologies from Federal laboratories, public and private universities, and other public and private institutions, the analysis of commercial opportunities represented by such technologies, and such other functions as the development business planning, market research, and financial packaging required for commercialization. Insofar as such Centers pursue these activities, Federal agencies are encouraged to employ these Centers to interface with small businesses for such purposes as facilitating small business participation in Federal procurement and fostering commercialization of Federally-funded research and development.

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§ 29⁴⁷⁹ WOMEN'S BUSINESS CENTER PROGRAM

Women's Business
Center Program.
15 USC 656.

⁴⁷⁹ This section, added by § 2 of PL 102-191, approved Dec. 5, 1991 (105 Stat. 1589), was renumbered as § 29 by § 411 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192). Section 29 was completely rewritten by § 308(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2611). Section 308(b) of the same law provides:

(b) APPLICABILITY—

(1) **IN GENERAL.** - Subject to paragraph (2), any organization conducting a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656)(as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, the organization shall receive financial assistance in accordance with section 29(c) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656)(as amended by this section).

(2) **TERMS OF ASSISTANCE FOR CERTAIN ORGANIZATIONS.** - Any organization operating in the third year of a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656)(as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, during the fourth and fifth years of the project, the organization shall receive financial assistance in accordance with section 29(c)(1)(C) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656)(as amended by this section).

The text of former § 29 is reprinted below:

WOMEN'S DEMONSTRATION PROJECTS

(a) The Administration may provide financial assistance to private organizations to conduct 3-year demonstration projects for the benefit of small business concerns owned and controlled by women. The projects shall provide--

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(b) (1) As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

(A) If the project first receives its Federal financial assistance prior to fiscal year 1993, an annual amount that is not less than the amount of the Federal financial assistance provided each year.

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(B) If the project first receives Federal financial assistance in fiscal year 1993, or thereafter, annual amounts equal to--

- (i) in the first year, 1 non-Federal dollar for each 2 Federal dollars;
- (ii) in the second year, 1 non-Federal dollar for each Federal dollar; and
- (iii) in the third and final year, 2 non-Federal dollars for each Federal dollar.

(2) Up to one-half of the non-Federal matching assistance may be in the form of in-kind contributions which are budget line items only, including but not limited to office equipment and office space.

(3) The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal matching funds are obtained.

(4) If any recipient of assistance under this section fails to obtain the required non-Federal contribution during any year of any project, it shall not be eligible thereafter for advance disbursements under paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded. In addition, prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(c) Each applicant for assistance under this section initially shall submit a 3-year plan on proposed fundraising and training activities, and may receive financial assistance under this section for a maximum of 3 years per site. The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include--

(1) the experience of the applicant in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a demonstration project within a minimum amount of time; and

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged.

(d) For purposes of this section, the term "small business concern" means a small business concern, either start-up or existing, owned and controlled by women, and--

- (1) which is at least 51 percent owned by 1 or more women; and
- (2) the management and daily business operations of which are controlled by 1 or more women.

(e) There are authorized to be appropriated \$4,000,000 for each fiscal year to carry out the demonstration projects authorized by this section. Notwithstanding any other provision of law, the Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

(f) The Administration shall prepare and transmit an annual report, beginning February 1, 1992, 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 section. Such report shall provide information concerning--

(a) DEFINITIONS - In this section—

(1) the term "Assistant Administrator" means the Assistant Administrator of the Office of Women's Business Ownership established under subsection (g);

"Assistant Administrator."

(2)⁴⁸⁰ the term "private nonprofit organization" means an entity that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

"Private nonprofit organization."

(3) the term "small business concern owned and controlled by women", either startup or existing, includes any small business concern—

"Small business concern owned and controlled by women."

(A) that is not less than 51 percent owned by 1 or more women; and

(B) the management and daily business operations of which are controlled by 1 or more women; and

(4) the term "women's business center site" means the location of—

"Women's business center site."

(A) a women's business center; or

(B) 1 or more women's business centers, established in conjunction with another women's business center in another location within a State or region—

(i) that reach a distinct population that would otherwise not be served;

- (1) the number of individuals receiving assistance;
- (2) the number of start-up business concerns formed;
- (3) the gross receipts of assisted concerns;
- (4) increases or decreases in profits of assisted concerns; and
- (5) the employment increases or decreases of assisted concerns.

(g) The Administration shall not provide financial assistance under this section to any new project after October 1, 1997, except that it may fund projects which commenced prior thereto.

(h) OFFICE OF WOMEN'S BUSINESS OWNERSHIP.- There is hereby established with the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises, as such term is defined in section 408 of the Women's Business Ownership Act of 1988. The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

⁴⁸⁰ Paragraphs (2) and (3) renumbered as (3) and (4), respectively, and new paragraph (2) added by § 2(1) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1795).

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(ii) whose services are targeted to women; and

(iii) whose scope, function, and activities are similar to those of the primary women's business center or centers in conjunction with which it was established.

(b) **AUTHORITY** - The Administration may provide financial assistance to private nonprofit⁴⁸¹ organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(c) **CONDITIONS OF PARTICIPATION—**

(1) **NON-FEDERAL CONTRIBUTIONS** - As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

(A) in the first and second years, 1 non-Federal dollar for each 2 Federal dollars; and

(B)⁴⁸² in the third, fourth, and fifth years, 1 non-Federal dollar for each Federal dollar.

⁴⁸¹ "Nonprofit" added by § 2(2) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1795).

⁴⁸² Subparagraphs 29(c)(1)(B) and (C) were deleted and a new subparagraph (B) was added by § 2(a) of P.L. 106-17, approved April 6, 1999 (113 Stat. 27). Text of former subparagraphs 29(c)(1)(B) and (C) are reprinted below:

(B) in the third and fourth years, 1 non-Federal dollar for each Federal dollar; and
(C) in the fifth year, 2 non-Federal dollars for each Federal dollar.

(2) **FORM OF NON-FEDERAL CONTRIBUTIONS** - Not more than one-half of the non-Federal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(3) **FORM OF FEDERAL CONTRIBUTIONS** - The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal sector matching funds are obtained.

(4) **FAILURE TO OBTAIN NON-FEDERAL FUNDING** - If any recipient of assistance fails to obtain the required non-Federal contribution during any project, it shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded by the Administration, and prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(d) **CONTRACT AUTHORITY** - A women's business center may enter into a contract with a Federal department or agency to provide specific assistance to women and other underserved small business concerns. Performance of such contract should not hinder the women's business centers in carrying out the terms of the grant received by the women's business centers from the Administration.

(e) **SUBMISSION OF 5-YEAR PLAN** - Each applicant organization initially shall submit a 5-year plan to the Administration on proposed fundraising and training activities, and a recipient organization may receive financial assistance under this program for a maximum of 5 years per women's business center site.

(f) **CRITERIA** - The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

Section 2(b) of P.L. 106-17 provides:

(b) **APPLICABILITY**—The amendments made by this section shall apply beginning October 1, 1998.

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(1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a project within a minimum amount of time;

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and

(4) the location for the women's business center site proposed by the applicant.

(g) OFFICE OF WOMEN'S BUSINESS OWNERSHIP—

(1) ESTABLISHMENT - There is established within the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises (as defined in section 408 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note)). The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

Office of
Women's
Business
Ownership.

(2) ASSISTANT ADMINISTRATOR OF THE OFFICE OF WOMEN'S BUSINESS OWNERSHIP—

Assista
Administra

(A) QUALIFICATIONS - The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5, United States Code. The Assistant Administrator shall serve as a noncareer appointee (as defined in section 3132(a)(7) of that title).

(B) RESPONSIBILITIES AND DUTIES—

(i) RESPONSIBILITIES - The responsibilities of the Assistant Administrator shall be to administer the programs and services of the Office of Women's Business Ownership established to assist women entrepreneurs in the areas of—

- (I) starting and operating a small business;
 - (II) development of management and technical skills;
 - (III) seeking Federal procurement opportunities;
- and

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- capital.
- (IV) increasing the opportunity for access to
- (ii) DUTIES - The Assistant Administrator shall—
- (I) administer and manage the Women's Business Center program;
- (II) recommend the annual administrative and program budgets for the Office of Women's Business Ownership (including the budget for the Women's Business Center program);
- (III) establish appropriate funding levels
- therefore;
- (IV) review the annual budgets submitted by each applicant for the Women's Business Center program;
- (V) select applicants to participate in the program under this section
- (VI) implement this section;
- (VII) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;
- (VIII) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;
- (IX) serve as liaison for the National Women's Business Council; and
- (X) advise the Administrator on appointments to the Women's Business Council.

(C) CONSULTATION REQUIREMENTS - In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

(h)⁴⁸³ PROGRAM EXAMINATION.—

⁴⁸³ Subsection 29(h) completely rewritten by § 3(1) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1795). Effective date of the change is Oct. 1, 1999, per § 6 of P.L. 106-165. Text of former subsection 29(h) is reprinted below:

PROGRAM EXAMINATION—

(1) IN GENERAL.—The Administration shall—

(A) develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section, pursuant to which each such center shall provide to the Administration—

(i) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) and, with respect to any in-kind contributions described in subsection (c)(2) that were used to satisfy the requirements of subsection (c), verification of the existence and valuation of those contributions; and

(B) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

(2) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to award a contract (as a sustainability grant) under subsection (1) or to renew a contract (either as a grant or cooperative agreement) under this section with a women's business center, the Administration—

(A) shall consider the results of the most recent examination of the center under paragraph (1); and

(B) may withhold such award or renewal, if the Administration determines that—

(i) the center has failed to provide any information required to be provided under clause (i) or (ii) of paragraph (1)(A), or the information provided by the center is inadequate; or

(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subsection (j), or the information provided by the center is inadequate.

(1) IN GENERAL - Not later than 180 days after the date of enactment of the Small Business Reauthorization Act of 1997, the Administrator shall develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section.

(2) EXTENSION OF CONTRACTS - In extending or renewing a contract with a women's business center, the Administrator shall consider the results of the examination conducted under paragraph (

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(i) **CONTRACT AUTHORITY** - The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the Administrator has entered into a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administrator provides the applicant with written notification setting forth the reasons therefore and affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5, United States Code.

(j)⁴⁸⁴ **MANAGEMENT REPORT.**—

Management
report.

(1) **IN GENERAL.**—The Administration shall prepare and submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of all projects conducted under this section.

(2) **CONTENTS.**—Each report submitted under paragraph (1) shall include information concerning, with respect to each women's business center established pursuant to this section—

- (A) the number of individuals receiving assistance;
- (B) the number of startup business concerns formed;
- (C) the gross receipts of assisted concerns;
- (D) the employment increases or decreases of assisted concerns;
- (E) to the maximum extent practicable, increases or decreases in profits of assisted concerns; and

⁴⁸⁴ Subsection (j) completely rewritten by § 3(2) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1796). The change is effective Oct. 1, 1999, per § 6 of P.L. 106-165. Text of former subsection (j) is reprinted below:

REPORT - The Administrator shall prepare and submit an annual report to the Committees on Small Business of the House of Representatives and the Senate on the effectiveness of all projects conducted under the authority of this section. Such report shall provide information concerning—

- (1) the number of individuals receiving assistance;
- (2) the number of startup business concerns formed;
- (3) the gross receipts of assisted concerns;
- (4) increases or decreases in profits of assisted concerns; and
- (5) the employment increases or decreases of assisted concerns.

(F) the most recent analysis, as required under subsection (h)(1)(B), and the subsequent determination made by the Administration under that subsection.

(k) AUTHORIZATION OF APPROPRIATIONS—

Authorization.

(1)⁴⁸⁵ IN GENERAL.—There is authorized to be appropriated, to remain available until the expiration of the pilot program under subsection (l)—

- (A) \$12,000,000 for fiscal year 2000;
- (B) \$12,800,000 for fiscal year 2001;
- (C) \$13,700,000 for fiscal year 2002; and
- (D) \$14,500,000 for fiscal year 2003.

(2) USE OF AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), amounts made available under this subsection for fiscal year 1999, and each fiscal year thereafter, may only be used for grant awards and may not be used for costs incurred by the Administration in connection with the management and administration of the program under this section.

(B)⁴⁸⁶ EXCEPTIONS.—Of the amount made available under this subsection for a fiscal year, the following amounts shall be available for selection panel costs, post-award conference costs, and costs related to monitoring and oversight:

- (i) For fiscal year 2000, 2 percent.
- (ii) For fiscal year 2001, 1.9 percent.
- (iii) For fiscal year 2002, 1.9 percent.
- (iv) For fiscal year 2003, 1.6 percent.

⁴⁸⁵ Paragraph 29(k)(1) was rewritten by § 4(b)(1) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1799). Section 6 of P.L. 106-165 provides that the effective date of the law is Oct. 1, 1999. Text of former paragraph 29(k)(1) is reprinted below:

There is authorized to be appropriated \$11,000,000* for each fiscal year to carry out the projects authorized under this section, of which, for fiscal year 1998, not more than 5 percent may be used for administrative expenses related to the program under this section.

*Amount changed from \$8,000,000 by § 3 of P.L. 106-17, approved April 6, 1999 (113 Stat. 27).

⁴⁸⁶ New subparagraph 29(k)(2)(B) added by § 4(b)(2)(B) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1799).

(3) **EXPEDITED ACQUISITION** - Notwithstanding any other provision of law, the Administrator, acting through the Assistant Administrator, may use such expedited acquisition methods as the Administrator determines to be appropriate to carry out this section, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

(4)⁴⁸⁷ **RESERVATION OF FUNDS FOR SUSTAINABILITY PILOT PROGRAM.—**

(A) **IN GENERAL.**—Subject to subparagraph (B), of the total amount made available under this subsection for a fiscal year, the following amounts shall be reserved for sustainability grants under subsection (l):

- (i) For fiscal year 2000, 17 percent.
- (ii) For fiscal year 2001, 18.8 percent.
- (iii) For fiscal year 2002, 30.2 percent.
- (iv) For fiscal year 2003, 30.2 percent.

(B) **USE OF UNAWARDED FUNDS FOR SUSTAINABILITY PILOT PROGRAM GRANTS.**—If the amount reserved under subparagraph (A) for any fiscal year is not fully awarded to private nonprofit organizations described in subsection (l)(1)(B), the Administration is authorized to use the unawarded amount to fund additional women's business center sites or to increase funding of existing women's business center sites under subsection (b).

(l)⁴⁸⁸ **SUSTAINABILITY PILOT PROGRAM.—**

Sustainability
pilot program.

(1) **IN GENERAL.**—There is established a 4-year pilot program under which the Administration is authorized to award grants (referred to in this section as "sustainability grants") on a competitive basis for an additional 5-year project under this section to any private nonprofit organization (or a division thereof)—

(A) that has received financial assistance under this section pursuant to a grant, contract, or cooperative agreement; and

⁴⁸⁷ New paragraph 29(k)(4) added by § 4(b)(3) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1799).

⁴⁸⁸ New subsection 29(l) added by § 4(a) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1796). Effective date is Oct. 1, 1999, per § 6 of P.L. 106-165. Section 4(c) of the same law provides:

GUIDELINES.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue guidelines to implement the amendments made by this section.

(B) that—

(i) is in the final year of a 5-year project; or

(ii) has completed a project financed under this section (or any predecessor to this section) and continues to provide assistance to women entrepreneurs.

(2) **CONDITIONS FOR PARTICIPATION.**—In order to receive a sustainability grant, an organization described in paragraph (1) shall submit to the Administration an application, which shall include—

(A) a certification that the applicant—

(i) is a private nonprofit organization;

(ii) employs a full-time executive director or program manager to manage the center; and

(iii) as a condition of receiving a sustainability grant, agrees—

(I) to a site visit as part of the final selection process and to an annual programmatic and financial examination; and

(II) to the maximum extent practicable, to remedy any problems identified pursuant to that site visit or examination;

(B) information demonstrating that the applicant has the ability and resources to meet the needs of the market to be served by the women's business center site for which a sustainability grant is sought, including the ability to fundraise;

(C) information relating to assistance provided by the women's business center site for which a sustainability grant is sought in the area in which the site is located, including—

(i) the number of individuals assisted;

(ii) the number of hours of counseling, training, and workshops provided; and

(iii) the number of startup business concerns formed;

(D) information demonstrating the effective experience of the applicant in—

(i) conducting financial, management, and marketing assistance programs, as described in paragraphs (1), (2), and (3) of subsection (b), designed to impart or upgrade the business skills of women business owners or potential owners;

(ii) providing training and services to a representative number of women who are both socially and economically disadvantaged;

(iii) using resource partners of the Administration and other entities, such as universities;

(iv) complying with the cooperative agreement of the applicant; and

(v) the prudent management of finances and staffing, including the manner in which the performance of the applicant compared to the business plan of the applicant and the manner in which grant funds awarded under subsection (b) were used by the applicant; and

(E) a 5-year plan that projects the ability of the women's business center site for which a sustainability grant is sought—

(i) to serve women business owners or potential owners in the future by improving fundraising and training activities; and

(ii) to provide training and services to a representative number of women who are both socially and economically disadvantaged.

(3) REVIEW OF APPLICATIONS.—

(A) IN GENERAL.—The Administration shall—

(i) review each application submitted under paragraph (2) based on the information provided in subparagraphs (D) and (E) of that paragraph, and the criteria set forth in subsection (f);

(ii) as part of the final selection process, conduct a site visit at each women's business center for which a sustainability grant is sought; and

(iii) approve or disapprove applications for sustainability grants simultaneously with applications for grants under subsection (b).

(B) DATA COLLECTION.—Consistent with the annual report to Congress under subsection (j), each women's business center site that is awarded a

SMALL BUSINESS ACT

sustainability grant shall, to the maximum extent practicable, collect information relating to—

- (i) the number of individuals assisted;
 - (ii) the number of hours of counseling and training provided and workshops conducted;
 - (iii) the number of startup business concerns formed;
 - (iv) any available gross receipts of assisted concerns;
- and
- (v) the number of jobs created, maintained, or lost at assisted concerns.

(C) RECORD RETENTION.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 10 years.

(4) NON-FEDERAL CONTRIBUTION.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, as a condition of receiving a sustainability grant, an organization described in paragraph (1) shall agree to obtain, after its application has been approved under paragraph (3) and notice of award has been issued, cash and in-kind contributions from non-Federal sources for each year of additional program participation in an amount equal to 1 non-Federal dollar for each Federal dollar.

(B) FORM OF NON-FEDERAL CONTRIBUTIONS.—Not more than 50 percent of the non-Federal assistance obtained for purposes of subparagraph (A) may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(5) TIMING OF REQUESTS FOR PROPOSALS.—In carrying out this subsection, the Administration shall issue requests for proposals for women's business centers applying for the pilot program under this subsection simultaneously with requests for proposals for grants under subsection (b).

§ 30⁴⁸⁹ OVERSIGHT OF REGULATORY ENFORCEMENT.

Oversight of
regulatory
enforcement.
15 USC 657.

(a) DEFINITIONS.—For purposes of this section, the term--

⁴⁸⁹Former § 30 redesignated as § 31 by § 222(1) of P.L. 104-121, approved March 29, 1996 (110 Stat. 860), and new § 30 added by § 222(2) of P.L. 104-121.

(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c), and "Board."

(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b). "Ombudsman."

(b) SBA ENFORCEMENT OMBUDSMAN.--

(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall--

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

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency; Report to Congress.

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and Report to agencies.

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS
BOARDS.--Regional Small
Business
Regulatory
Fairness
Boards.
15 USC 657.

(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall--

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

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

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

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

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

(d) POWERS OF THE BOARDS.

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

Powers
of the
Boards.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

§ 31.⁴⁹⁰ HUBZONE PROGRAM

HUBZone
Program.
15 USC 658.

(a) **IN GENERAL** - There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

(b) ELIGIBLE CONTRACTS—

(1) DEFINITIONS - In this subsection—

(A) the term “contracting officer” has the meaning given that term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5); and

“Contracting
officer.”
[41 USC 423.]

⁴⁹⁰ New section 31 added by § 602(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2629). Section 602(b)(2) of P.L. 105-135 provided that the HUBZone program would apply to the agencies listed in paragraphs (A) – (J) below. Section 210 of P.L. 106-113, approved Nov. 29, 1999 (113 Stat. 1501) added the Departments of Commerce, Justice and State ((K) – (M)) to the list. Amended § of P.L. 105-135 reads: “(2) INITIAL LIMITED APPLICABILITY - During the period beginning on the date of enactment of this Act and ending on September 30, 2000, section 31 of the Small Business Act (as added by paragraph (1) of this subsection) shall apply only to procurements by—

- (A) the Department of Defense;
- (B) the Department of Agriculture;
- (C) the Department of Health and Human Services;
- (D) the Department of Transportation;
- (E) the Department of Energy;
- (F) the Department of Housing and Urban Development;
- (G) the Environmental Protection Agency;
- (H) the National Aeronautics and Space Administration;
- (I) the General Services Administration;
- (J) the Department of Veterans Affairs;
- (K) the Department of Commerce;
- (L) the Department of Justice; and
- (M) the Department of State.

(B) the term "full and open competition" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

"Full and open competition."
41 USC.

(2) **AUTHORITY OF CONTRACTING OFFICER** - Notwithstanding any other provision of law—

(A) a contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) \$3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price;

(B) a contract opportunity shall be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price; and

(C) not later than 5 days from the date the Administration is notified of a procurement officer's decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

(3) **PRICE EVALUATION PREFERENCE IN FULL AND OPEN COMPETITIONS** - In any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small

business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(4) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES

- A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

(c) ENFORCEMENT; PENALTIES—

(1) VERIFICATION OF ELIGIBILITY - In carrying out this section, the Administrator shall establish procedures relating to—

Eligibility verification.

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under section 3(p)(5); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 3(p)(5).

(2) EXAMINATIONS - The procedures established under paragraph (1) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 3(p)(5).

Examinations.

(3) PROVISION OF DATA - Upon the request of the Administrator, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(4) PENALTIES - In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a "HUBZone small business concern" for purposes of this section, shall be subject to—

Penalties.

(A) section 1001 of title 18, United States Code; and

(B) sections 3729 through 3733 of title 31, United States Code.

§ 32⁴⁹¹ VETERANS PROGRAMS.

(a) **OFFICE OF VETERANS BUSINESS DEVELOPMENT.**—There is established in the Administration an Office of Veterans Business Development, which shall be administered by the Associate Administrator for Veterans Business Development (in this section referred to as the “Associate Administrator”) appointed under section 4(b)(1).

Veterans
Programs.
Office of
Veterans
Business
Development.

(b) **ASSOCIATE ADMINISTRATOR FOR VETERANS BUSINESS DEVELOPMENT.**—The Associate Administrator—

(1) shall be an appointee in the Senior Executive Service;

(2) shall be responsible for the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. The Associate Administrator shall act as an ombudsman for full consideration of veterans in all programs of the Administration; and

(3) shall report to and be responsible directly to the Administrator.

§ 33.⁴⁹² NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.

(a) **ESTABLISHMENT.**—There is established a federally chartered corporation to be known as the National Veterans Business Development Corporation (in this section referred to as the “Corporation”) which shall be incorporated under the laws of the District of Columbia and which shall have the powers granted in this section.

National
Veterans
Business
Development
Corporation.

(b) **PURPOSES OF THE CORPORATION.**—The purposes of the Corporation shall be—

(1) to expand the provision of and improve access to technical assistance regarding entrepreneurship for the Nation’s veterans; and

⁴⁹¹New section 32 added by § 201(b)(2) of P.L. 106-50, approved August 17, 1999 (113 Stat. 235).

⁴⁹²New section 33 added by § 202(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 236). Section 202(b) of P.L. 106-50 provides:

GAO REPORT.—Not later than 180 days after the last day of the second fiscal year beginning after the date on which the initial members of the Board of Directors of the National Veterans Business Development Corporation are appointed under section 33(c) of the Small Business Act (as added by this section), the Comptroller General of the United States shall evaluate the effectiveness of the National Veterans Business Development Corporation in carrying out the purposes under section 33(b) of the Small Business Act (as added by this section), and submit to Congress a report on the results of that evaluation.

(2) to assist veterans, including service-disabled veterans, with the formation and expansion of small business concerns by working with and organizing public and private resources, including those of the Small Business Administration, the Department of Veterans Affairs, the Department of Labor, the Department of Commerce, the Department of Defense, the Service Corps of Retired Executives (described in section 8(b)(1)(B) of this Act), the Small Business Development Centers (described in section 21 of this Act), and the business development staffs of each department and agency of the United States.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors composed of nine voting members and three nonvoting ex officio members.

(2) APPOINTMENT OF VOTING MEMBERS.—The President shall, after considering recommendations which shall be proposed by the Chairmen and Ranking Members of the Committees on Small Business and the Committees on Veterans Affairs of the House of Representatives and the Senate, appoint United States citizens to be voting members of the Board, not more than five of whom shall be members of the same political party.

(3) EX OFFICIO MEMBERS.—The Administrator of the Small Business Administration, the Secretary of Defense, and the Secretary of Veterans Affairs shall serve as the nonvoting ex officio members of the Board of Directors.

(4) INITIAL APPOINTMENTS.—The initial members of the Board of Directors shall be appointed non later than 60 days after the date of enactment of this Act.

(5) CHAIRPERSON.—The members of the Board of Directors appointed under paragraph (2) shall elect one such member to serve as chairperson of the Board of Directors for a term of 2 years.

(6) TERMS OF APPOINTED MEMBERS.—

(A) IN GENERAL.—Each member of the Board of Directors appointed under paragraph (2) shall serve a term of 6 years, except as provided in subparagraph (B).

(B) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

- (i) three shall be for a term of 2 years; and
- (ii) three shall be for a term of 4 years.

(C) **UNEXPIRED TERMS.**—Any member of the board of Directors appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of the term. A member may serve after the expiration of that member's term until a successor has taken office.

(7) **VACANCIES.**—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made. In the case of a vacancy in the office of the Administrator of the Small Business Administration or the Secretary of Veterans Affairs, and pending the appointment of a successor, an acting appointee for such vacancy may serve as an ex officio member.

(8) **INELIGIBILITY FOR OTHER OFFICES.**—No voting member of the Board of directors may be an officer or employee of the United States while serving as a member of the Board of Directors or during the 2-year period preceding such service.

(9) **IMPARTIALITY AND NONDISCRIMINATION.**—The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination.

(10) **OBLIGATIONS AND EXPENSES.**—The Board of Directors shall prescribe the manner in which the obligations of the Corporation may be incurred and in which its expenses shall be allowed and paid.

(11) **QUORUM.**—Five voting members of the Board of Directors shall constitute a quorum, but a lesser number may hold hearings.

(d) **CORPORATE POWERS.**—On October 1, 1999, the Corporation shall become a body corporate and as such shall have the authority to do the following:

- (1) To adopt and use a corporate seal.
- (2) To have succession until dissolved by an Act of Congress.
- (3) To make contracts or grants.
- (4) To sue and be sued, and to file and defend against lawsuits in State or Federal court.
- (5) To appoint, through the actions of its Board of Directors, officers and employees of the Corporation, to define their duties and responsibilities, fix their compensations, and to dismiss at will such officers or employees.
- (6) To prescribe, through the actions of its Board of Directors, bylaws not inconsistent with Federal law and the law of the State of incorporation, regulating the

manner in which its general business may be conducted and the manner in which the privileges granted to it by law may be exercised.

(7) To exercise, through the actions of its Board of Directors or duly authorized officers, all powers specifically granted by the provisions of this section, and such incidental powers as shall be necessary.

(8) To solicit, receive, and disburse funds from private, Federal, State and local organizations.

(9) To accept and employ or dispose of in furtherance of the purposes of this section any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise.

(10) To accept voluntary and uncompensated services.

(e) CORPORATE FUNDS.—

(1) DEPOSIT OF FUNDS.—The board of Directors shall deposit all funds of the Corporation in federally chartered and insured depository institutions until such funds are disbursed under paragraph (2).

(2) DISBURSEMENT OF FUNDS.—Funds of the Corporation may be disbursed only for purposes that are—

(A) approved by the Board of Directors by a recorded vote with a quorum present; and

(B) in accordance with the purposes of the Corporation as specified in subsection (b).

(f) NETWORK OF INFORMATION AND ASSISTANCE CENTERS.—In carrying out the purpose described in subsection (b), the Corporation shall establish and maintain a network of information and assistance centers for use by veterans and the public.

(g) ANNUAL REPORT.—On or before October 1 of each year, the Board of Directors shall transmit a report to the President and the Congress describing the activities and accomplishments of the Corporation for the preceding year and the Corporation's findings regarding the efforts of Federal, State and private organizations to assist veterans in the formation and expansion of small business concerns.

Annual
report.

(h) ASSUMPTION OF DUTIES OF ADVISORY COMMITTEE.—On October 1, 2004, the Corporation established under this section shall assume the duties, responsibilities, and authority of the Advisory Committee on Veterans Affairs established under section 203 of this Act.

(i) **USE OF MAILS.**—The Corporation may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(j) **PROFESSIONAL CERTIFICATION ADVISORY BOARD.**—

Professional
Certification
Advisory
Board.

(1) **IN GENERAL.**—Acting through the Board of Directors, the Corporation shall establish a Professional Certification Advisory Board to create uniform guidelines and standards for the professional certification of members of the Armed Services to aid in their efficient and orderly transition to civilian occupations and professions and to remove potential barriers in the areas of licensure and certification.

(2) **MEMBERSHIP.**—The members of the Advisory Board shall serve without compensation, shall meet in the District of Columbia no less than quarterly, and shall be appointed by the Board of Directors as follows:

(A) **PRIVATE SECTOR MEMBERS.**—The Corporation shall appoint not less than seven members for terms of 2 years to represent private sector organizations and associations, including the American Association of Community Colleges, the Society for Human Resource Managers, the Coalition for Professional Certification, the Council on Licensure and Enforcement, and the American Legion.

(B) **PUBLIC SECTOR MEMBERS.**—The Corporation shall invite public sector members to serve at the discretion of their departments or agencies and shall—

(i) encourage the participation of the Under Secretary of Defense for Personnel and Readiness;

(ii) encourage the participation of two officers from each branch of the Armed Forces to represent the Training Commands of their branch; and

(iii) seek the participation and guidance of the Assistant Secretary of Labor for Veterans' Employment.

(k) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), there are authorized to be appropriated to the Corporation to carry out this section—

(A) \$2,000,000 for fiscal year 2000;

(B) \$4,000,000 for fiscal year 2001;

- (C) \$4,000,000 for fiscal year 2002; and
- (D) \$2,000,000 for fiscal year 2003.

(2) **MATCHING REQUIREMENT.—**

(A) **FISCAL YEAR 2001.—**The amount made available to the Corporation for fiscal year 2001 may not exceed twice the amount that the Corporation certifies that it will provide for that fiscal year from sources other than the Federal Government.

(B) **SUBSEQUENT FISCAL YEARS.—**The amount made available to the Corporation for fiscal year 2002 or 2003 may not exceed the amount that the Corporation certifies that it will provide for that fiscal year from sources other than the Federal Government.

(3) **PRIVATIZATION.—**The Corporation shall institute and implement a plan to raise private funds and become a self-sustaining corporation.

§ 34.⁴⁹³ All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

15 USC 631
note.

⁴⁹³Former § 21 redesignated as § 30 by § 202 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Section 30 redesignated as § 31 by § 222(1) of P.L. 104-121, approved March 29, 1996 (110 Stat. 860). Section 31 redesignated as § 32 by § 602(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2629). Section then redesignated as § 34 by § 201(b)(1) of P.L. 106-50, approved August 17, 1999 (113 Stat. 235).

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This compilation includes
PL 106-50, approved 8/17/99

SMALL BUSINESS INVESTMENT ACT OF 1958

(Public Law 85-699,¹ as amended)

Sec. 101.² SHORT TITLE

This Act may be cited as the "Small Business Investment Act of 1958".

Sec. 102. STATEMENT OF POLICY

15 USC 661.

It is declared to be the policy of the Congress and the purpose of this Act to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of, private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: Provided, however, That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

Statement of
policy.

It is the intention of the Congress that the provisions of this Act shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country.

It³ is the intention of the Congress that in the award of financial assistance under this Act, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.

Sec. 103. DEFINITIONS.

15 USC 662.

As used in this Act --

¹Approved Aug. 21, 1958 (72 Stat. 689).

²The table of contents formerly found in section 101 was removed by § 2(d)(3) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

³This paragraph added by § 416 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1019).

- (1) the term "Administration" means the Small Business Administration; "Administra
- (2) the term "Administrator" means the Administrator of the Small Business Administration; "Administrator."
- (3)⁴ the terms "small business investment company", "company", and "licensee" mean a company approved by the Administration to operate under the provisions of this Act and issued a license as provided in section 301; "Small business investment company."
"Company."
"Licensee."
- (4)⁵ the term "State" includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia; "State."
- (5) the term "small-business concern" shall have the same meaning as in the Small Business Act, except⁶ that, for purposes of this Act-- "Small business concern."
- (A) an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation-
- (i) shall not cause a business concern to be deemed not independently owned and operated;
- (ii) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and
- (iii) shall be disregarded in determining whether a small business concern is a smaller enterprise; and
- (B)⁷ in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries,

⁴Amended by § 2(f) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752). Section 2(a) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314), deleted "(c)" after "section 301".

⁵Amended by § 3 of PL 86-502, approved June 11, 1960 (74 Stat. 196), to reflect admission of Alaska and Hawaii to the Union.

⁶Exception added by § 208(a)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-739).

⁷Subparagraph 103(5)(B) added by § 2(c)(1)(D) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

SMALL BUSINESS INVESTMENT ACT OF 1958

or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(i) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(ii) the net income (so determined) less any deduction for State (and local) income taxes calculated under clause (i), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation;

(6) the term "development companies" means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations; "Development companies."

(7) the term "license" means a license issued by the Administration as provided in section 301;⁸ and "License."

(8)⁹ the term "articles" means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities. "Articles."

(9)¹⁰ the term "private capital" - "Private capital."

(A) means the sum of-

(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: Provided, That such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

(B) does not include any-

⁸This paragraph added by § 2(2) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752). Section 2(a) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314), deleted "(c)" after "section 301".

⁹This paragraph added by § 106(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

¹⁰Paragraphs (9) and (10) added by § 410 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1017). Paragraph (9) rewritten by § 208(a)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-739). Text of former paragraph (9) is reprinted below:

Notwithstanding any other provision of law, the term "private capital" means the private paid-in capital and paid-in surplus of a corporate licensee, or the private partnership capital of an unincorporated licensee, inclusive of (A) any funds invested in the licensee by a public or private pension fund, (B) any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital and otherwise meets criteria established by the Administration, and (C) unfunded commitments from institutional investors that meet criteria established by the Administration, but it excludes any funds which are borrowed by the licensee from any source or which are obtained or derived, directly or indirectly, from any Federal source, including the Administration: Provided, that no unfunded commitment from an institutional investor may be used for the purpose of meeting the minimum amount of private capital required by this Act or as the basis for the Administration to issue obligations to provide financing

- (i) funds borrowed by a licensee from any source;
- (ii) funds obtained through the issuance of leverage; or
- (iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for-

(I)¹¹ funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established prior to October 1, 1987;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);

(10)¹² the term "leverage" includes-

"Leverage."

- (A) debentures purchased or guaranteed by the Administration;
- (B) participating securities purchased or guaranteed by the Administration; and
- (C) preferred securities outstanding as of October 1, 1995;

(11)¹³ the term "third party debt" means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

"Third party debt."

(12) the term "smaller enterprise" means any small business concern that, together with its affiliates-

"Smaller enterprise."

(A) has-

¹¹ Subclauses 103(9)(B)(iii)(I) and (II) redesignated as (II) and (III), respectively, and new subclause 103(9)(B)(iii)(I) added by § 213 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601).

¹² Paragraph 103(10) rewritten by § 208(a)(3) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-740). Text of former paragraph 10 reprinted below:

the term "leverage" includes debentures purchased or guaranteed by the Administration, participating securities purchased or guaranteed by the Administration, or preferred securities issued by companies licensed under section 301(d) of the Act and which have been purchased by the Administration.

¹³ Paragraphs (11) through (16) added by § 208(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-740).

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(i) a net financial worth of not more than \$6,000,000, as of the date on which assistance is provided under this Act to that business concern; and

(ii)¹⁴ an average net income for the 2-year period preceding the date on which assistance is provided under this Act to that business concern, of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses) except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation; or

(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

(13) the term "qualified nonprivate funds" means any-

"Qualified nonprivate funds."

(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term "private capital";

(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term "private capital"; and

(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee;

(14) the terms "employee welfare benefit plan" and "pension plan" have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974, and are intended to include-

"Employee welfare benefit plan."
"Pension plan."

¹⁴The exception in clause 103(12)(A)(ii) added by § 2(c)(2) of P.L. 106-9, approved April 9, 1999 (113 Stat. 17).

(A) public and private pension or retirement plans subject to such Act; and

(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

(15) the term "member" means, with respect to a licensee that is a limited [li]ability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company; and

"Member."

(16) the term "limited liability company" means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration.

"Limited liability company."

TITLE II -- SMALL BUSINESS INVESTMENT DIVISION OF THE
SMALL BUSINESS ADMINISTRATION

Sec. 201. ESTABLISHMENT OF SMALL BUSINESS INVESTMENT
DIVISION¹⁵

15 USC 671.

There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

TITLE III -- SMALL BUSINESS INVESTMENT COMPANIES

Sec. 301. ORGANIZATION OF SMALL BUSINESS INVESTMENT
COMPANIES

15 USC 681.

(a) A small business investment company shall be an incorporated body, a limited liability company,¹⁶ or a limited partnership¹⁷ organized and chartered or otherwise existing¹⁸ under State law solely for the purpose of performing the functions and conducting the activities contemplated under this title, which, if incorporated, has succession for a period of

¹⁵Amended by § 2 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359), to provide that the Division be headed by an Associate Administrator in lieu of a Deputy Administrator; to delete the provisions stating that the powers of the Administrator under the Act be exercised through the Small Business Investment Division; and to transfer the administrative and penal provisions to a new sec. 308(f).

¹⁶Reference to limited liability company added by § 208(b)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-741).

¹⁷The phrase "or a limited partnership" added by § 106(b)(1) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

¹⁸The phrase "or otherwise existing" added by § 106(b)(2) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

SMALL BUSINESS INVESTMENT ACT OF 1958

not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years,¹⁹ and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles²⁰), shall be subject to the approval of the Administration.²¹

(b) The articles²² of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this Act that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

Articles.

(c)²³ ISSUANCE OF LICENSE.-

Issuance of
license.

(1) SUBMISSION OF APPLICATION.-Each applicant for a license to operate as a small business investment company under this Act shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

(2) PROCEDURES.-

(A) STATUS.-Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the

¹⁹"Or partners" added by § 106(b)(3) of PL 94-305, approved June 4, 1976 (90 Stat. 663). The clause "has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners" changed to current language by § 105 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2993).

²⁰The phrase "of incorporation" deleted by § 106(b)(4) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

²¹Sec. 301(a) rewritten by § 11(a) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756):

²²The phrase "of incorporation" deleted wherever it appeared in this subsection per § 106(c) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

²³Subsection 301(c) rewritten by § 208(b)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-741). Text of former subsection 301(c) is reprinted below:

The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles and permit it to operate under the provisions of this Act, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles, the Administration may in its discretion approve the company to operate under the provisions of this Act and issue the company a license for such operation.

applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

(B) APPROVAL OR DISAPPROVAL.-Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall-

(i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or

(ii) disapprove the application and notify the applicant in writing of the disapproval.

(3) MATTERS CONSIDERED.-In reviewing and processing any application under this subsection, the Administrator-

(A) shall determine whether-

(i) the applicant meets the requirements of subsections (a) and (c) of section 302; and

(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this Act;

(B) shall take into consideration-

(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

(ii) the general business reputation of the owners and management of the applicant; and

(iii) the probability of successful operations of the applicant, including adequate probability [profitability] and financial soundness; and

(C) shall not take into consideration any projected shortage or unavailability of leverage.

(4) EXCEPTION.-

(A) IN GENERAL.-Notwithstanding any other provision of this Act, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that-

(i) has private capital of not less than \$3,000,000;

(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 302(a); and

(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 302(a).

(B)²⁴ **LEVERAGE** - An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 302(a), unless the applicant—

(i) files an application for a license not later than 180 days after the date of enactment of the Small Business Reauthorization Act of 1997;

(ii) is located in a State that is not served by a licensee; and

(iii) agrees to be limited to 1 tier of leverage available under section 302(b), until the applicant meets the requirements of section 302(a).

(d)²⁵ [Repealed].

(e)²⁶ **FEES**—

Licensing
fees.

(1) **IN GENERAL** - The Administration may prescribe fees to be paid by each applicant for a license to operate as a small business investment company under this Act.

(2) **USE OF AMOUNTS** - Fees collected under this subsection—

²⁴ Subparagraph 301(c)(4)(B) rewritten by § 212 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601). Text of former subparagraph 301(c)(4)(B) is reprinted below:

LEVERAGE.—An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 302(a).

²⁵ Subsection 301(d) repealed by § 208(b)(3)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-742). Section 208(b)(3)(B) provides that: “[t]he repeal under subparagraph (A) shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act”. Text of repealed provision is reprinted below:

Notwithstanding any other provision of this Act, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership and may be licensed by the Administration to operate under the provisions of this Act.

²⁶ New subsection 301(e) added by § 214 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601).

(A) shall be deposited in the account for salaries and expenses of the Administration; and

(B) are authorized to be appropriated solely to cover the costs of licensing examinations.

Sec. 302. CAPITAL REQUIREMENTS²⁷

15 USC 682.

(a) AMOUNT.-

Capital requirements for SBICs.

(1) IN GENERAL.-Except as provided in paragraph (2), the private capital of each licensee shall be not less than-

(A) \$5,000,000; or

(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this Act.

(2) EXCEPTION.-The Administrator may, in the discretion of the Administration and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) ADEQUACY.-In addition to the requirements of paragraph (1), the Administrator shall-

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able,²⁸ both prior to licensing and prior to approving any request for financing, to make periodic payments on any

²⁷Heading amended by § 203(b) of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

²⁸Subsection 302(a) rewritten to this point by § 208(c)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-742). Text of former subsection 302(a) is reprinted below:

The combined private paid-in capital and paid-in surplus of any company licensed pursuant to sections 301(c) and (d) of this Act shall not be less than \$150,000: Provided, however, That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1992 pursuant to sections 301(c) of this title shall be not less than \$2,500,000 and pursuant to section 301(d) of this title shall be not less than \$1,500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. The Administration shall also determine the ability of the company, [.]

debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.²⁹

(4)³⁰ EXEMPTION FROM CAPITAL REQUIREMENTS.-The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 301 before the date of enactment of the Small Business Program Improvement Act of 1996 that does not meet the capital requirements of paragraph (1), if-

Exemption
from capital
requirements.

(A) the licensee certifies in writing that not less [than] 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Program Improvement Act of 1996 will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Company Act of 1956,³¹ any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

Bank
participation.

²⁹Subsection 302(a) substantially rewritten two times - first by § 203(a) of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269), to transfer SBIC authority to sell subordinated debentures to SBA to sec. 303(b); second by § 105 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757), to raise the minimum start-up capital to \$500,000 for SBICs licensed on or after Oct. 1, 1979. The last sentence was added by § 406(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1015).

³⁰Paragraph 302(a)(4) added by § 208(c)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743).

³¹Reference to the Bank Holding Company Act added by § 5 of PL 86-502, approved June 11, 1960 (74 Stat. 196), to allow a bank subsidiary of a holding company to invest in an SBIC subsidiary of the same holding company. Section 6 of the Bank Holding Company Act was repealed by § 9 of PL 89-485, approved July 1, 1966 (80 Stat. 240). Section 6(a)(1) was formerly 12 USC 1845(a)(1); see now 12 USC 371c. The maximum amount of shares a bank may hold in SBICs, formerly set at 2 percent of capital and surplus by § 3(b) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752) and at 5 percent but not to exceed 49 percent of any class of voting shares by § 204 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 270), is now limited only by the 5 percent provision under § 107 of PL 94-305, approved June 4, 1976 (90 Stat. 663). The word "and" was inserted between the words "capital" and "surplus" by § 210 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553).

Subsection 302(b) was rewritten by § 215(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601). Text of former subsection 302(b) is reprinted below:

shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus.

(c)³² **DIVERSIFICATION OF OWNERSHIP.**-The Administrator shall ensure that the management of each licensee licensed after the date of enactment of the Small Business Program Improvement Act of 1996 is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

Stock
limitations.

Sec. 303. **BORROWING POWER**

15 USC 683.

(a) Each small business investment company shall have authority to borrow money and to issue its securities³³, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

Borrowing
power.

(b)³⁴ To encourage the formation and growth of small business investment companies the Administration is authorized³⁵ when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities³⁶ issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. 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 under this subsection.³⁷ Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the

Debentures and
participating
securities, SBA
guarantee.

³²Subsection 302(c) rewritten by § 208(c)(3) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743). Text of former subsection 302(c) is reprinted below:

The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration.

³³The term "securities" substituted for "debenture bonds" by § 208(h)(1)(A)(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-746).

³⁴Section 205 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 270), substantially recast the authority of SBA to purchase the debentures of SBICs and incorporated within this sec. 303(b) the debenture purchasing authority formerly set out in sec. 302(a). As amended, sec. 303(b) increases the capacity of SBICs to borrow from SBA and provides an even greater borrowing capacity for equity-oriented SBICs. Section 10 of PL 92-213, approved Dec. 22, 1971 (85 Stat. 776), amended this sec. 303(b) debenture purchase authority of SBA by adding the authority to guarantee the timely payment of principal and interest on such debentures but requiring that the authority to purchase or guarantee be exercisable only when specially authorized in appropriation Acts; and by expressly pledging the full faith and credit of the United States to the payment of such guarantees.

³⁵The phrase "(but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms)" removed by § 208(d)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743).

³⁶Phrase "or participating securities" added by § 402(1) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1008).

³⁷The "timely payment" and "full faith and credit" features and the word "guarantee" after the word "purchase" and all variations thereon throughout subsection (b) added by § 10 of PL 92-213, approved Dec. 22, 1971 (85 Stat. 775).

SMALL BUSINESS INVESTMENT ACT OF 1958

financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 percent,³⁸ plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) ³⁹The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 301(c) of this Act shall not exceed 300 per centum of the private capital of such company: Provided, That nothing in this paragraph shall require any such company that on March 31, 1993, has outstanding debentures in excess of 300 per centum of its private capital to repay such excess: And provided further, That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) After March 31, 1993, the maximum amount of outstanding leverage made available to a company licensed under section 301(c) of this Act shall be determined by the amount of such company's private capital--

Maximum
outstanding
leverage.

³⁸The last part of this sentence was changed from "1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes" by § 208(c)(6)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

³⁹Paragraphs 303(b)(1) - (3) were rewritten by § 402(2) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1008). Text of former paragraphs (1) - (3) follows:

(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private paid-in capital and paid-in surplus of such company. In no event shall the debentures guaranteed and outstanding under this title of any such company or companies which are commonly controlled as determined by the Administration exceed \$35,000,000.

(2) The total amount of debentures which may be purchased or guaranteed and outstanding any one time from a company not complying with section 301(d) of this Act, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of \$500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed \$35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection.

SMALL BUSINESS INVESTMENT ACT OF 1958

§ 303(b)(2)(A) to
§ 303(b)(4)(B)(i)

(A) if the company has private capital of not more than \$15,000,000, the total amount of leverage shall not exceed 300 per centum of private capital;

(B) if the company has private capital of more than \$15,000,000 but not more than \$30,000,000, the total amount of leverage shall not exceed \$45,000,000 plus 200 per centum of the amount of private capital over \$15,000,000; and

(C) if the company has private capital of more than \$30,000,000, the total amount of leverage shall not exceed \$75,000,000 plus 100 per centum of the amount of private capital over \$30,000,000 but not to exceed an additional \$15,000,000.

(D)⁴⁰ (i) The dollar amounts in subparagraphs (A), (B), and (C) shall be adjusted annually to reflect increases in the Consumer Price Index established by the Bureau of Labor Statistics of the Department of Labor.

(ii) The initial adjustments made under this subparagraph after the date of enactment of the Small Business Reauthorization Act of 1997 shall reflect only increases from March 31, 1993.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 301(c) of this Act may issue and have outstanding both guaranteed debentures and participating securities: Provided, That the total amount of participating securities outstanding shall not exceed 200 per centum of private capital.

(4)⁴¹ MAXIMUM AGGREGATE AMOUNT OF LEVERAGE—

(A) IN GENERAL - Except as provided in subparagraph (B), the aggregate amount of outstanding leverage issued to any company or companies that are commonly controlled (as determined by the Administrator) may not exceed \$90,000,000, as adjusted annually for increases in the Consumer Price Index.

(B) EXCEPTIONS - The Administrator may, on a case-by-case basis—

(i) approve an amount of leverage that exceeds the amount described in subparagraph (A) for companies under common control; and

⁴⁰Subparagraph 303(b)(2)(D) added by § 215(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2602).

⁴¹ Paragraph 303(b)(4) rewritten by § 215(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2602). Text of former paragraph 303(b)(4) is reprinted below:

In no event shall the aggregate amount of outstanding leverage of any such company or companies which are commonly controlled as determined by the Administration exceed \$90,000,000, unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default.

Maximum
aggregate
amount of
leverage.

SMALL BUSINESS INVESTMENT ACT OF 1958

(ii) impose such additional terms and conditions as the Administrator determines to be appropriate to minimize the risk of loss to the Administration in the event of default.

(C) **APPLICABILITY OF OTHER PROVISIONS** - Any leverage that is issued to a company or companies commonly controlled in an amount that exceeds \$90,000,000, whether as a result of an increase in the Consumer Price Index or a decision of the Administrator, is subject to subsection (d).

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.⁴² "Venture capital."

(c)⁴³**THIRD PARTY DEBT.**-The Administrator-

Third party
debt.

⁴²The unnumbered paragraph following subsection 303(b), defining "venture capital," related to fourth-tier leverage for the SSBIC program, which has been repealed.

⁴³Subsection 303(c) rewritten by § 208(d)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743). Text of former subsection 303(c) is reprinted below:

Subject to the following conditions, the Administration is authorized to purchase securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 301(d) of this Act. 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 under this subsection. As used in this subsection, the term "securities" means shares of nonvoting stock or other corporate securities or limited partnership interests which have similar characteristics.

(I) The Administration may purchase such securities: Provided, That--

(A) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

(B) on liquidation or redemption the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration shall be paid any amounts as may be due pursuant to subparagraph (i) of this paragraph;

(C) the purchase price shall be at par value and, in any one sale, \$50,000 or more; and

(D) the amount of such securities purchased and outstanding at any one time shall not exceed --

(i) from a company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such company, or

(ii) from any such company licensed after October 13, 1971, and having a combined paid-in capital and paid-in surplus of less than \$500,000, 100 per centum of such capital and surplus; or

(iii) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of \$500,000 or more, 200 per centum of such capital and surplus.

SMALL BUSINESS INVESTMENT ACT OF 1958

- (E) The amount of such securities purchased by the Administration in excess of 100 per centum of such capital and surplus from any company described in clause (i) or (iii) may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in equity securities. For the purposes of the subsection, the term "equity securities" means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint ventures for profit, or unsecured debt instruments which are subordinated by their terms to all other borrowings of the issuer.
- (2) The Administration may purchase or guarantee debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)): Provided, That--
- (A) such debentures are issued for a term of not to exceed fifteen years;
- (B) the interest rate is determined pursuant to this section or section 317; and
- (C) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than \$500,000 shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of \$500,000 or more, 400 per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.
- (3) Debentures purchased and outstanding pursuant to section 303(b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(C) of this subsection (c).
- (4) The Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintain a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.
- (5) Notwithstanding the foregoing provisions of this subsection, securities purchased by the Administration on or after the effective date of this Act (A) shall provide that dividends shall be preferred and cumulative to the extent of 4 per centum of par value per annum and (B) shall include a provision requiring the issuer to redeem such securities, including any accrued and unpaid dividends, in 15 years from the date of issuance: Provided, That the Administration may, in its discretion, guarantee debentures in such amounts as will permit the simultaneous redemption of such securities, including such amounts as it deems appropriate to include all or any part of accrued and unpaid dividends: Provided further, That the Administration shall not pay any part of the interest on such debentures except pursuant to its guarantee in the event of default in payment by the issuer.
- (6) In no event shall the Administration purchase or guarantee debentures or securities under the provisions of this title if the amount of outstanding securities and debentures of a company operating under the authority of section 301(d) would exceed 400 per centum of its combined private paid-in capital and paid-in surplus or \$35,000,000, which ever is less except as provided in paragraph (7);
- (7) The Administration may guarantee debentures or may guarantee the payment of the redemption and prioritized payments on participating securities under subsection (g) from a company operating under section 301(d) of this Act in amounts above \$35,000,000 but not to exceed the maximum amounts specified in section 303(b) subject to the following:

SMALL BUSINESS INVESTMENT ACT OF 1958

(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.

(d)⁴⁴ REQUIRED CERTIFICATIONS—

Smaller
enterprise
financing.

(1) IN GENERAL - The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing—

(A) for licensees with leverage less than or equal to \$90,000,000, that not less than 20 percent of the licensee's aggregate dollar amount of financings will be provided to smaller enterprises; and

(B) for licensees with leverage in excess of \$90,000,000, that, in addition to satisfying the requirements of subparagraph (A), 100 percent of the licensee's aggregate dollar amount of financings made in whole or in part with leverage in excess of \$90,000,000 will be provided to smaller enterprises (as defined in section 103(12)).

(2) MULTIPLE LICENSEES - Multiple licensees under common control (as determined by the Administrator) shall be considered to be a single licensee for purposes

(A) The interest rate on debentures and the rate of prioritized payments on participating securities shall be specified in subsection 303(g)(2) without any reductions.

(B) Any outstanding assistance under paragraphs (1) to (6) of this subsection shall be subtracted from such company's eligibility under section 303(b)(2)(A).

⁴⁴Subsection 303(d) rewritten by § 208(d)(3) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743). Text of former subsection 303(d) is reprinted below:

If the Administration guarantees debentures issued by a small business investment company operating under authority of section 301(d) of this Act, it shall make, on behalf of the company payments in such amounts as will reduce the effective rate of interest to be paid by the company during the first five years of the term of such debentures to a rate of interest 3 points below the market rate of interest determined pursuant to section 321. Such payments shall be made by the Administration to the holder of the debenture, its agents or assigns, or to the appropriate central registration agent, if any. The authority to reduce interest rates as provided in this subsection shall be limited to amounts provided in advance in appropriations Acts, and the total amount shall be reserved within the business loan and investment fund to pay an amount equal to the amount of the reduction as it becomes due.

Subsection 303(d) was rewritten again by § 215(b)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2602). Text of former subsection 303(d) is reprinted below:

REQUIREMENT TO FINANCE SMALLER ENTERPRISES.-The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises.

SMALL BUSINESS INVESTMENT ACT OF 1958

of determining both the applicability of and compliance with the investment percentage requirements of this subsection.

(e)⁴⁵ CAPITAL IMPAIRMENT.-Before approving any application for leverage submitted by a licensee under this Act, the Administrator-

Capital
impairment

(1) shall determine that the private capital of the licensee meets the requirements of section 302(a); and

(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(f)⁴⁶ REDEMPTION OR REPURCHASE OF PREFERRED STOCK.-
Notwithstanding any other provision of law-

Redemption or
repurchase of
preferred stock.

⁴⁵Subsection 303(e) rewritten by § 208(c)(4)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744). Section 208(c)(4)(B) provides:

(B) REGULATIONS.-

(i) UNIFORM APPLICABILITY.-Any regulation issued by the Administration to implement section 303(e) of the Small Business Investment Act of 1958 that applies to any licensee with outstanding leverage obtained before the effective date of that regulation, shall apply uniformly to all licensees with outstanding leverage obtained before that effective date.

(ii) DEFINITIONS.-For purposes of this subparagraph, the terms "Administration", "leverage" and "licensee" have the same meanings as in section 103 of the Small Business Investment Act of 1958.

Text of former subsection 303(e) is reprinted below:

In determining the private capital of a small business investment company licensed under section 301(d) and notwithstanding section 103(9), Federal, State, or local government funds received from sources other than the Administration shall be included solely for regulatory purposes, and not for the purpose of obtaining financial assistance from or licensing by the Administration, providing such funds were invested [prior] to November 21, 1989: Provided, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term "capital indirectly obtained" includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 301(d).

⁴⁶Subsection 303(f) rewritten by § 208(h)(1)(A)(ii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-746). Text of former subsection 303(f) is reprinted below:

Notwithstanding the provisions of any other law, rule, or regulation, the Administration is authorized to allow the issuer of any preferred stock heretofore sold to the Administration to redeem or repurchase such stock upon the payment to the Administration of an amount less than the par value of such stock. The Administration, in its sole discretion, shall determine the repurchase price after considering factors including, but not limited to, the market value of the stock, value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid accrued, and anticipated, and the Administration's estimate of any anticipated redemption. The Administration may guarantee debentures as provided in paragraph (5) of subsection (c) and allow the issuer to use the proceeds to make the payments authorized herein. Any monies received by the Administration from the repurchase of preferred stock shall

SMALL BUSINESS INVESTMENT ACT OF 1958

(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989, to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including-

- (A) the market value of the stock;
- (B) the value of benefits provided and anticipated to accrue to the issuer;
- (C) the amount of dividends paid, accrued, and anticipated; and
- (D) the estimate of the Administrator of any anticipated redemption; and

(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g)⁴⁷ In order to encourage small business investment companies to provide equity capital to small businesses, the Administration is authorized to guarantee the payment of the redemption price and prioritized payments on participating securities issued by such companies which are licensed pursuant to section 301(c) of this Act, and a trust or a pool acting on behalf of the Administration is authorized to purchase such securities. Such guarantees and purchases shall be made on such terms and conditions as the Administration shall establish by regulation. For purposes of this section, (A) the term "participating securities" includes preferred stock, a preferred limited partnership interest or a similar instrument, including debentures under the terms of which interest is payable only to the extent of earnings and (B) the term "prioritized payments" includes dividends on stock, interest on qualifying debentures, or priority returns on preferred limited partnership interests which are paid only to the extent of earnings. Participating securities guaranteed under this subsection shall be subject to the following restrictions and limitations, in addition to such other restrictions and limitations as the Administration may determine:

Participating securities.

"Participating securities."
"Prioritized payments."

(1) Participating securities shall be redeemed not later than 15 years after their date of issuance for an amount equal to 100 per centum of the original issue price plus the amount of any accrued prioritized payment: Provided, That if, at the time the securities are redeemed, whether as scheduled or in advance, the issuing company (A) has not paid all accrued prioritized payments in full as provided in paragraph (2) below and (B) has not sold or otherwise disposed of all investments subject to profit distributions pursuant to paragraph

be deposited in the business loan and investment fund and shall be available solely to provide assistance to companies operating under the authority of section 301(d), to the extent and in the amounts provided in advance in appropriations Acts. "

⁴⁷Subsections (g) and (h) added by § 403 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1009).

(11), the company's obligation to pay accrued and unpaid prioritized payments shall continue and payments shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payment shall be extinguished: Provided further, That in the interim, the company shall not make any in-kind distributions of such investments unless it pays to the Administration such sums, up to the amount of the unrealized appreciation on such investments, as may be necessary to pay in full the accrued prioritized payments.

(2) Prioritized payments on participating securities shall be preferred and cumulative and payable out of the retained earnings available for distribution, as defined by the Administration, of the issuing company at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the nearest one-eighth of 1 percent,⁴⁸ plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration.

(3) In the event of liquidation of the company, participating securities shall be senior in priority for all purposes to all other equity interests in the issuing company, whenever created.

(4) Any company issuing a participating security under this subsection shall commit to invest or shall invest⁴⁹ an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, "equity capital" means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments contingent upon and limited to the extent of earnings.

"Equity
capital."

(5) The only debt other than leverage obtained in accordance with this title which any company issuing a participating security under this subsection may have outstanding shall be temporary debt in amounts limited to not more than 50 per centum of private capital.

(6) The Administration may permit the proceeds of a participating security to be used to pay the principal amount due on outstanding debentures guaranteed by the Administration, if (A) the company has outstanding equity capital invested in an amount equal to the amount of the debentures being refinanced and (B) the Administration receives profit participation on such terms and conditions as it may determine, but not to exceed the per centums specified in paragraph (11).

(7) For purposes of computing profit participation under paragraph (11), except as otherwise determined by the Administration, the management expenses of any

⁴⁸The last part of this sentence was changed from "1 per centum, plus, at the time the guarantee is issued, such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes, but not to exceed 2 per centum" by § 208(c)(6)(B) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

⁴⁹The phrase "and maintain" was removed by § 208(c)(5) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

company which issues participating securities shall not be greater than 2.5 per centum per annum of the combined capital of the company, plus \$125,000 if the company's combined capital is less than \$20,000,000. For purposes of this paragraph, (A) the term "combined capital" means the aggregate amount of private capital and outstanding leverage and (B) the term "management expenses" includes salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but does not include the cost of services provided by specialized outside consultants, outside lawyers and outside auditors, who perform services not generally expected of a venture capital company nor does such term include the cost of services provided by any affiliate of the company which are not part of the normal process of making and monitoring venture capital investments.

"Combined capital."
"Management expenses."

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members⁵⁰ in amounts not greater than each partner's, shareholder's, or member's maximum tax liability. For purposes of this paragraph, the term "maximum tax liability" means the amount of income allocated to each partner, shareholder, or member (including an allocation to the Administration as if it were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the company with respect to the fiscal year of the company immediately preceding such distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the income tax of the State where the company's principal place of business is located.⁵¹ A company may also elect to make a distribution under this paragraph at the end of any calendar quarter based on a quarterly estimate of the maximum tax liability. If a company makes 1 or more quarterly distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

"Maximum tax liability."

(9) After making any distributions as provided in paragraph (8), a company with participating securities outstanding may distribute the balance of income to its investors, specifically including the Administration, in the per centums specified in paragraph (11), if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full, subject to the following conditions:

(A) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 per centum of the amount of private capital, any

⁵⁰The references to members throughout this subsection were added by § 208(h)(1)(A)(iii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-746).

⁵¹ Language following the footnote signal was added by § 215(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

amounts distributed shall be made to private investors and to the Administration in the ratio of leverage to private capital.

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the amount of private capital, 50 per centum of any amounts distributed shall be made to the Administration and 50 per centum shall be made to the private investors.

(C) If the amount of leverage outstanding is 100 per centum, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(D) Any amounts received by the Administration under subparagraph (A) or (B) shall be applied first as profit participation as provided in paragraph (11) and any remainder shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(10) After making any distributions pursuant to paragraph (8), a company with participating securities outstanding may return capital to its investors, specifically including the Administration, if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full. Any distributions under this paragraph shall be made to private investors and to the Administration in the ratio of private capital to leverage as of the date of the proposed distribution: Provided, That if the amount of leverage outstanding is less than 50 per centum of the amount of private capital or \$10,000,000, whichever is less, no distribution shall be required to be made to the Administration unless the Administration determines, on a case by case basis, to require distributions to the Administration to reduce the amount of outstanding leverage to an amount less than \$10,000,000.

(11) (A) A company which issues participating securities shall agree to allocate to the Administration a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administration in accordance with the following:

(i) If the total amount of participating securities is 100 per centum of private capital or less, the company shall allocate to the Administration a per centum share computed as follows: the amount of participating securities divided by private capital times 9 per centum.

(ii) If the total amount of participating securities is more than 100 per centum but not greater than 200 per centum of private capital, the company shall allocate to the Administration a per centum share computed as follows:

(I) 9 per centum, plus

(II) 3 per centum of the amount of participating securities minus private capital divided by private capital.

SMALL BUSINESS INVESTMENT ACT OF 1958

(B) Notwithstanding any other provision of this paragraph--

(i) in no event shall the total per centum required by this paragraph exceed 12 per centum, unless required pursuant to the provisions of (ii) below,

(ii) if, on the date the participating securities are marketed, the interest rate on Treasury bonds with a maturity of 10 years is a rate other than 8 per centum, the Administration shall adjust the rate specified in paragraph (A) above, either higher or lower, by the same per centum by which the Treasury bond rate is higher or lower than 8 per centum, and

(iii) this paragraph shall not be construed to create any ownership interest of the Administration in the company.

(12) A company may elect to make an in-kind distribution of securities only if such securities are publicly traded and marketable. The company shall deposit the Administration's share of such securities for disposition with a trustee designated by the Administration or, at its option and with the agreement of the company, the Administration may direct the company to retain the Administration's share. If the company retains the Administration's share, it shall sell the Administration's share and promptly remit the proceeds to the Administration. As used in this paragraph, the term "trustee" means a person who is knowledgeable about and proficient in the marketing of thinly traded securities.

"Trustee."

(13)⁵² Repealed.

(h) The computation of amounts due the Administration under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) shall be computed annually and the Administration shall receive distributions of its profit participation at the same time as other investors in the company.

⁵²Paragraph 303(g)(13) repealed by § 2(d)(1) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17). Text of paragraph 303(g)(13), which was added by § 215 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4184) is reprinted below:

PARTICIPATING SECURITIES FOR SMALLER SMALL BUSINESS INVESTMENT COMPANIES.--

(A) IN GENERAL.--Subject to the provisions of subparagraph (B), of the amount of the annual program level of participating securities approved in appropriations Acts, 50 percent shall be reserved for funding small business investment companies with private capital of not more than \$20,000,000.

(B) EXCEPTION.--During the last quarter of each fiscal year, if the Administrator determines that there is a lack of qualified applicants with private capital of not more than \$20,000,000, the Administrator may utilize all or any part of the program level for securities reserved under subparagraph (A) for qualified applicants with private capital of more than \$20,000,000.

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(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administration.

(3) After distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced.

(4) If the company prepays or repays the participating securities, the Administration shall receive the requisite participation upon the distribution of profits due to any investments held by the company on the date of the repayment or prepayment.

(5) If a company is licensed on or before March 31, 1993, it may elect to exclude from profit participation all investments held on that date and in such case the Administration shall determine the amount of the future expenses attributable to such prior investment: Provided, That if the company issues participating securities to refinance debentures as authorized in subsection (g)(6), it may not elect to exclude profits on existing investments under this paragraph.

(i)⁵³ **LEVERAGE FEE.**-With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee⁵⁴ in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

Leverage
fee.

(j)⁵⁵ **CALCULATION OF SUBSIDY RATE.**-All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures and participating securities under this Act.

Calculation of
subsidy rate.

[2 USC 661a].

Sec. 304. **PROVISION OF EQUITY CAPITAL FOR SMALL BUSINESS CONCERNS⁵⁶**

15 USC 684.
Equity capital.

⁵³Subsection 303(i) added by § 208(c)(6)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

⁵⁴ Language after the footnote signal was substituted for “, payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee” by § 215(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

⁵⁵Subsection 303(j) added by § 208(c)(6)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

⁵⁶Prior to its amendment by § 6 of PL 86-502, approved June 11, 1960 (74 Stat. 196), sec. 304 authorized SBICs to furnish equity capital only through the purchase of convertible debentures.

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(a) It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated⁵⁷ small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Before any capital is provided to a small-business concern under this section -

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c)⁵⁸ [Repealed.]

(d)⁵⁹Equity capital provided to incorporated small-business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

Sec. 305. LONG-TERM LOANS TO SMALL-BUSINESS CONCERNS

Long-term
loans.
15 USC 685.

(a) Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

(b) Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.⁶⁰

Form of loan -
direct,
participation,
or guarantee.

(c) The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration: Provided, That the Administration also shall permit those companies which have issued debentures pursuant to this Act to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding

Conditions of
loan.

⁵⁷The words "and unincorporated" added by § 2(e) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

⁵⁸Section 206 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271), repealed sec. 304(c) which gave to companies receiving equity financing from an SBIC an option to purchase stock in the SBIC.

⁵⁹This subsection added by § 5 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752).

⁶⁰This sentence amended by § 6 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 753), to substitute "other lenders, incorporated or unincorporated" for "other lending institutions". The sentence "In agreements to participate in loans on a deferred basis under this subsection, the participation by the company shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement", was repealed by § 105 of PL 94-305, approved June 4, 1976 (90 Stat. 663).

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debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration⁶¹.

(d) Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the company finds that such extension or renewal will aid in the orderly liquidation of such loan.

Sec. 306. AGGREGATE LIMITATIONS

Assistance
limitations.
15 USC 686.

(a) ⁶²If any small business investment company has obtained financing from the Administration and such financing remains outstanding, the aggregate amount of obligations and securities acquired and for which commitments may be issued by such company under the provisions of this title for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration.

(b) [Repealed.⁶³]

(c)⁶⁴ With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding

[P.L. 90-104].

⁶¹Proviso added by § 411 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1018).

⁶²Subsection 306(a) rewritten by § 408(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1016). Text of former § 306(a) follows:

Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this Act for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company.

⁶³Repealed by § 2(f) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314). Former sec. 306(b) reprinted below to provide a clearer understanding of this entire section:

[(b) For the purpose of this section, the combined paid-in capital and paid-in surplus of any company licensed prior to January 1, 1968, shall consist of (1) the paid-in capital and paid-in surplus of such company and (2) the following portions of the funds outstanding from the Administration through the issuance of subordinated debentures as of the effective date of the Small Business Investment Act Amendments of 1967, or on January 1 of each of the following calendar years, whichever is less: (A) 100 percent, during 1968; (B) 75 percent, during 1969; (C) 50 percent, during 1970; (D) 25 percent, during 1971; and (E) zero, during 1972 and thereafter.]

⁶⁴Added by § 207 of PL 90-104, the Small Business Investment Act Amendments of 1967, approved Oct. 11, 1967 (81 Stat. 271). Effective date of PL 90-104 referred to in this subsection is Jan. 1, 1968, per § 211 of PL 90-104.

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commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.

Sec. 307. EXEMPTIONS⁶⁵

Exemptions.

(a) Section 3 of the Securities Act of 1933, as amended (15 U.S.C. 77c), is hereby amended by inserting at the end thereof the following new subsection (c): [15 USC 77c].

"(c) The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors."

(b) Section 304 of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd) is hereby amended by adding the following subsection (e): [15 USC 77ddd]

"(e) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors."

(c) Section 18 of the Investment Company Act of 1940 (15 U.S.C. 80a - 18) is amended by adding at the end thereof the following: [15 USC 80a-18].

"(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958."⁶⁶

Sec. 308. MISCELLANEOUS

15 USC 687.

(a)⁶⁷ Wherever practicable the operations of a small business investment company, including the generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this Act may be handled through such banks or other investors or lenders on a fee basis. Any Cooperation with banks or other investors.

⁶⁵The Act provides a specific exemption from the Investment Company Act of 1940 for SBICs, releasing them from a 3-to-1 asset coverage requirement in connection with borrowings. SBA may prescribe limitations on borrowing by SBICs.

⁶⁶See sec. 319 of the Small Business Investment Act for further amendment.

⁶⁷Sec. 308(a) amended by § 8 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 753), to substitute "investors or lenders, incorporated or unincorporated" for "financial institutions."

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small business investment company may receive fees for services rendered to such banks and other investors and lenders.

(b) Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under the provisions of this Act.⁶⁸ Such companies with outstanding financings⁶⁹ are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions.⁷⁰

Advisory
services.

Investment
of funds.

(c)⁷¹ The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this Act, in accordance with the purposes of this Act.

Regulations.

(d) Should any small business investment company violate or fail to comply with any of the provisions of this Act or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this Act shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

Noncom-
pliance.

(e) Except as expressly provided otherwise in this Act,⁷² nothing in this Act or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligations entered into, or stocks issued, or commitments made, by any company operating under the provisions of this Act.⁷³

⁶⁸The last seven words of this sentence added by § 11(c) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756).

⁶⁹Phrase "with outstanding financings" added by § 408(c) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1016).

⁷⁰The last sentence first revised by § 5 of PL 88-273, approved Feb. 28, 1964 (78 Stat. 147), to permit deposits of idle SBIC funds in insured savings accounts; later revised by § 102 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757), to equalize SBA's treatment of FSLIC and FDIC insured institutions.

⁷¹The provisions relating to examinations and reports by SBICs were deleted from this subsection by § 3(1) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and added as a new sec. 310(b) by § 5(2) of PL 89-779.

⁷²Clause beginning "Except as" added by § 208(e) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745).

⁷³The last seven words added by § 11(d) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756). The same section also struck out

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(f)⁷⁴ In the performance of, and with respect to the functions, powers, and duties vested by this Act, the Administrator and the Administration shall (in addition to any authority otherwise vested by this Act) have the functions, powers, and duties set forth in the Small Business Act, and the provisions of sections 13 and 16 of that Act, insofar as applicable, are extended to the functions of the Administrator and the Administration under this Act.

[15 USC 631].
[15 USC 642].
[15 USC 645].

(g)⁷⁵ (1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act, a full and detailed account of its operations under this Act. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

Annual report.
[15 USC 639(a)].

(2)⁷⁶ In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act, the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

(D) An accounting by the Bureau of the Budget⁷⁷ with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

the previous sec. 308(e) and (f) and redesignated this subsection (formerly (g)) as (e). The former sec. 308(e) and (f) were rewritten and expanded by § 9 of PL 87-341 and designated as secs. 309, 310, and 311.

⁷⁴Sec. 308(f) added by § 3 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and contains the provision transferred from sec. 201.

⁷⁵Sec. 308(g) added by § 3(2) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and redesignated as sec. 308(g)(1) by § 210 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271).

⁷⁶Sec. 308(g)(2) added by § 210 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271).

⁷⁷This should read "Office of Management and Budget" per Reorganization Plan No. 2 of 1970.

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(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(G) Recommendations to the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

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

(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of the Internal Revenue Code of 1954.

[15 USC 80a-1].
[26 USC 851].

(3)⁷⁸ In its annual report for the year ending on December 31, 1993, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act, the Administration shall include a full and detailed description or account relating to--

(A) the number of small business investment companies the Administration licensed, the number of licensees that have been placed in liquidation, and the number of licensees that have surrendered their licenses in the previous year, identifying the amount of government leverage each has received and the type of leverage instruments each has used;

⁷⁸Paragraph 308(g)(3) added by § 417(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1019). Section 417(b) of PL 102-366 reads: Not later than 4 years after the date of enactment of this Act, the Comptroller General of the United States shall transmit to the Committees on Small Business of the House of Representatives and the Senate a report that reviews the Small Business Investment Company program (established under the Small Business Investment Act of 1958) for the 3-year period following the date of enactment of this Act, with respect to each item listed in section 308(g)(3) of the Small Business Investment Act of 1958, as amended by subsection (a).

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

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

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

(h)⁷⁹ CERTIFICATIONS OF ELIGIBILITY.--

Certifications of
eligibility.

(1) CERTIFICATION BY SMALL BUSINESS CONCERN.--Prior to receiving financial assistance from a company licensed pursuant to section 301,⁸⁰ a small business concern shall certify in writing that it meets the eligibility requirements of the Small Business Investment Company Program or the Specialized Small Business Investment Company Program, as applicable.

(2) CERTIFICATION BY COMPANY.--Prior to providing financial assistance to a small business concern under this Act, a company licensed pursuant to section 301 shall certify in writing that it has reviewed the application for assistance of the small business concern and that all documentation and other information supports the eligibility of the applicant.

(3) RETENTION OF CERTIFICATIONS.--Certificates made pursuant to paragraphs (1) and (2) shall be retained by the company licensed pursuant to section 301 for the duration of the financial assistance.

(i)⁸¹ (1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

Long-term loans
and equity funds

⁷⁹New subsection 308(h) added by § 214 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4184). For history of prior subsection 308(h), see previous edition of this Handbook.

⁸⁰References to "subsection (c) or (d) of section 301" were replaced with references to "section 301" throughout subsection 308(h) by § 208(h)(1)(B) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

⁸¹New Sec. 308(i) added by § 1 of PL 99-226, approved Dec. 28, 1985 (99 Stat. 1744). Sec. 2 of PL 99-226 provides that the Act shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980. The Act was intended to be a technical amendment, clarifying the policy embodied in PL 96-221, approved Mar. 31, 1980 (94 Stat. 132). House report 99-306 states that Congress, by enacting PL 99-226, "makes it clear that SBA, by regulation, has the authority to determine the maximum allowable interest rates on loans to small businesses which are made by SBIC's and MESBIC's."

The text of prior Sec. 308(i) is provided:

(i) (1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

(2) In the case of a business loan, the small business investment company making such loan may charge

SMALL BUSINESS INVESTMENT ACT OF 1958

Interest
limitations.

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation).⁸² In this paragraph, the term "interest" includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after

interest on such loan at a rate which does not exceed the lowest of the rates described in subparagraphs (A), (B), and (C).

(A) The rate described in this subparagraph is the maximum rate prescribed by regulation by the Small Business Administration for loans made by any small business investment company (determined without regard to any State rate incorporated by such regulation).

(B) The rate described in this subparagraph is the maximum rate authorized by an applicable State law or constitutional provision which is not preempted for purposes of this subsection.

(C) (i) The rate described in this subparagraph is the higher of the Federal Reserve rate or the maximum rate authorized by applicable State law or constitutional provision (determined without regard to the preemption of such State law or constitutional provision).

(ii) For purposes of clause (i), the term "Federal Reserve rate" means the rate equal to the sum of 1 percentage point plus the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which the principal office of the small business investment company is located.

(iii) The rate described in this subparagraph shall not apply to loans made in a State if there is no maximum rate authorized by applicable State law or constitutional provision for such loans or there is a maximum rate authorized by an applicable State law or constitutional provision which is not preempted for purposes of this subsection.

Prior history of old Sec. 308(i)

Sec. 308(i), effective April 1, 1980, was added by § 524 of PL 96-221 (94 Stat. 132) in Title V -- State Usury Laws (94 Stat. 161), approved Mar. 31, 1980. Title V of PL 96-221 repealed PL 96-104, § 105(a)(2) of PL 96-161, and the amendments and provisions of Title II of PL 96-161, except that as to any loan made in any State during any period when such laws were in effect in such State, the provisions of such laws shall continue to apply.

Sec. 528 of PL 96-221 provided:

In any case in which one or more provisions of, or amendments made by, this title, section 529 of the National Housing Act, or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85), apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate.

⁸²The last sentence in paragraph 308(i)(2) added by § 2(a) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

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April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

(4) (A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

Sec. 309.⁴³ REVOCATION AND SUSPENSION OF LICENSES; CEASE AND DESIST ORDERS

Suspend or
revoke
licenses.
15 USC 687

(a)⁴⁴ A license may be revoked or suspended by the Administration --

(1) for false statements knowingly made in any written statement required under this title, or under any regulation issued under this title by the Administration;

(2) If any written statement required under this title, or under any regulation issued under this title by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;

(3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this Act;

⁴³Sec. 309 added by § 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 753). Previous sec. 309 was repealed by § 11(e) of PL 87-341.

⁴⁴Heading and sec. 309(a), (b), (c), (e) and (f) amended by § 4 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359), to reflect license revocation authority granted to SBA; to delete limitation of grounds for suspension of license for false or misleading statements made for purpose of obtaining a license; and to authorize issuance and enforcement of cease and desist orders against individuals as well as licensees.

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(4) for willful or repeated violation of or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this Act; or

(5) for violation of, or failure to observe, any cease and desist order issued by the Administration under this section.

(b) Where a licensee or any other person has not complied with any provision of this Act, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such Act or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with the Act and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Before revoking or suspending a license pursuant to subsection (a) or issuing a cease and desist order pursuant to subsection (b), the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) The Administration may require by subpoena [sic] the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpoena [sic], the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

(e) An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued,⁸⁵ appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by

⁸⁵Section 4(e) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360), added the clause "or other person against whom an order is issued."

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leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition.³⁶ The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28, United States Code.

[28 USC 1254].

(f)³⁷ If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) for applications to set aside or modify orders.

Enforcement.

Sec. 310. EXAMINATIONS AND INVESTIGATIONS³⁸

15 USC 687b.
Investigations.

(a) The Administration may make such investigations as it deems necessary to determine whether a licensee 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

³⁶Section 402(15) of PL 98-620, approved Nov. 11, 1984, Federal Courts Improvements Act (98 Stat. 3335 at 3357), removed the sentence at this point, which made "proceedings in such cases in the court of appeals" a preferred cause to be expedited in every way.

³⁷Amended by § 4(f) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360), to provide for enforcement of cease and desist orders against individuals as well as against licensees. Amended again by § 402(15) of PL 98-620, *supra*, to remove last sentence making such case a preferred cause.

³⁸Sec. 310 added by § 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 755). Section heading amended by § 5 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

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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, 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 licensee, 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.

(b) Each small business investment company shall be subject to examinations made by direction of the Investment Division of⁸⁹ the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations,⁹⁰ and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.⁹¹ Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements.

Examinations.

Private sector entity.

Fees for cost examinations collection; us

Reports.

(c)⁹² Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not--

⁸⁹Phrase "Investment Division of" substituted for "examiners selected or approved by" by § 407(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1016). Section 407(b) provides: Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration.

⁹⁰The clause allowing examinations to be performed by a private sector entity was added by § 208(f)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745).

⁹¹ Second sentence in subsection 310(b) added by § 216 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

⁹²Section 104 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2993), added section 310(c) and deleted the following from section 310(b):

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- this title;
- (1) it has engaged solely in lawful activities and those contemplated by
 - (2) it has engaged in prohibited conflicts of interest;
 - (3) it has acquired or exercised illegal control of an assisted small business;
 - (4) it has made investments in small businesses for⁹³ not less than five years;
 - (5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable⁹⁴;
 - (6) it has engaged in relending, foreign investments, or passive investments; or
 - (7) it has charged an interest rate in excess of the maximum permitted by law:

Provided, That the Administration may waive the examination (A) for up to one additional year if, in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior operating experience of the company, the contents and results of the last examination and the management expertise of the company, or (B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

(d)⁹⁵ VALUATIONS.-

Valuations.

Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership.

⁹³The phrase "not less than four years in the case of section 301(d) licensees and in all other cases," was deleted by § 208(h)(1)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

⁹⁴Phrase "if such restriction is applicable" added by § 408(b) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1016).

⁹⁵Subsection 310(d) rewritten by § 208(f)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745). Text of former subsection 310(d) is reprinted below:

Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: Provided, That any company which does not have outstanding financial assistance under the provisions of this title shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise.

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(1) FREQUENCY OF VALUATIONS.-

(A) IN GENERAL.-Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

(B) MATERIAL ADVERSE CHANGES.-Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) INDEPENDENT CERTIFICATION.-

Certification and
audit of financial
statements.

(i) IN GENERAL.-Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) AUDIT REQUIREMENTS.-Each audit conducted under clause (i) shall include-

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) VALUATION CRITERIA.-Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall-

(A) be established or approved by the Administrator; and

(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.

Sec. 311. INJUNCTIONS AND OTHER ORDERS*

Injunctions.
15 USC 687c.

(a) Whenever, in the judgment of the Administration, a licensee 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,

*Section 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 755), added sec. 311(a) (formerly substantially contained in section 308(e)) and sec. 311(b) authorizing the appointment of a trustee or receiver.

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or of any order issued under this Act, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.⁹⁷

(b) In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c)⁹⁸ The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

Trustee.

Sec. 312. CONFLICTS OF INTEREST⁹⁹

Conflicts of
interest.
15 USC 687d.

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders, partners, or members¹⁰⁰ of either, or to the purposes of this Act, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, partner, or member of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure (including disclosure in the locality most directly affected by the transaction) necessary to the purposes of this section.

Directors and
officers, removal
or suspension.
15 USC 687e.

Sec. 313. REMOVAL OR SUSPENSION OF DIRECTORS AND OFFICERS OF LICENSEES¹⁰¹

⁹⁷Section 402(15) of PL 98-620, approved Nov. 11, 1984 (98 Stat. 3357), repealed the last sentence which made an application by SBA for an injunction or compliance order "a preferred cause" to be expedited in every way.

⁹⁸Sec. 311(c) added by § 6 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

⁹⁹Sec. 312 added by § 6 of PL 88-273, approved Feb. 28, 1964 (78 Stat. 147). The words "or partner" and "or partners" added by §§ 106(f)(1) and (2) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

¹⁰⁰References to "member[s]" throughout this section added by § 208(h)(1)(D) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

¹⁰¹Sec. 313 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1361).

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(a) The Administration may serve upon any director or officer of a licensee a written notice of its intention to remove him from office whenever, in the opinion of the Administration, such director or officer --

- (1) has willfully and knowingly committed any substantial violation of --
 - (A) this Act,
 - (B) any regulation issued under this Act, or
 - (C) a cease-and-desist order which has become final, or

(2) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty as such director or officer, and that such violation or such breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer.

(b) In respect to any director or officer referred to in subsection (a), the Administration may, if it deems it necessary for the protection of the licensee or the interests of the Administration, by written notice to such effect served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (d), shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) and until such time as the Administration shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer, until the effective date of any such order. Copies of any such notice shall also be served upon the interested licensee.

Authority to
suspend.

(c) A notice of intention to remove a director of [sic; should read "or"] officer, as provided in subsection (a), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administration at the request of (1) such director or officer and for good cause shown, or (2) the Attorney General of the United States. Unless such director or officer shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Administration shall find that any of the grounds specified in such notice has been established, the Administration may issue such orders of removal from office as it deems appropriate. Any such order shall become effective at the expiration of thirty days after service upon such licensee and the director or officer concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Administration or a reviewing court.

Notice.

Hearing.

(d) Within ten days after any director or officer has been suspended from office and/or prohibited from participation in the conduct of the affairs of a licensee under subsection (b), such director or officer may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director or officer under subsection (a), and such court shall have jurisdiction to stay such suspension and/or prohibition. Jurisdiction.

(e) Whenever any director or officer of a licensee is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administration may, by written notice served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. A copy of such notice shall also be served upon the licensee. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administration. In the event that a judgment of conviction with respect to such offense is entered against such director or officer, and at such time as such judgment is not subject to further appellate review, the Administration may issue and serve upon such director or officer an order removing him from office. A copy of such order shall be served upon such licensee, whereupon such director or officer shall cease to be a director or officer of such licensee. A finding of not guilty or other disposition of the charge shall not preclude the Administration from thereafter instituting proceedings to suspend or remove such director or officer from office and/or to prohibit him from further participation in licensee affairs, pursuant to subsection (a) or (b). Felony,
dishonesty or
breach of trust.

(f) (1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the licensee is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the Administration has notified the parties that the case has been submitted to it for final decision, the Administration shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Administration may at any time, upon such notice, and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Administration may modify, terminate, or set aside any such order with permission of the court. Hearing.

Judicial
review.

(2) Any party to such proceeding may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the director or officer concerned, or an order issued under subsection (e) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition

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praying that the order of the Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Administration, and thereupon the Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

[28 USC 2112].

[28 USC 1254].

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administration.

Sec. 314. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY DUTY¹⁰².

15 USC 687f.

(a) Wherever a licensee violates any provision of this Act or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Except with the written consent of the Administration, it shall be unlawful --

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if --

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

¹⁰²Sec. 314 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1363).

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(2) for any person to continue to serve in any of the above-described capacities, if -

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonestly or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

Sec. 315. PENALTIES AND FORFEITURES¹⁰³

15 USC 687g.

(a) Except as provided in subsection (b) of this section, a licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 310(b) of this Act, shall forfeit and pay to the United States a civil penalty of not more than \$100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

Penalty.

(b) The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

Sec. 316. JURISDICTION AND SERVICE OF PROCESS¹⁰⁴

Jurisdiction.
15 USC 687h.

Any suit or action brought under section 308, 309, 311, 313, or 315 by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this Act, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

Sec. 317.¹⁰⁵

[15 USC 80a-18(k)].

¹⁰³Sec. 315 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

¹⁰⁴Sec. 316 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

¹⁰⁵Sections 317 and 318 were deleted by § 208(h)(1)(E) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747). The same section redesignated old sections 319 - 322 as sections 317 - 320, respectively. Text of former section 317 is reprinted

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Section 18 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a - 18), is further amended by amending subsection (k) to read as follows:

"(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958, and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration."

Preferred stock asset coverage requirement, exemption.

Sec. 318. GUARANTEED OBLIGATIONS NOT ELIGIBLE FOR PURCHASE BY FEDERAL FINANCING BANK¹⁰⁶

15 USC 687k.

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985 --

- (1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this title,
- (2) any obligation which is an interest in any obligation described in paragraph (1), or
- (3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

Sec. 319. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES¹⁰⁷

15 USC 687l.

below:

Notwithstanding section 303(b), the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 303(c), shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 303(b). The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to the effective date of this section, without interest thereon, to interest payable after such effective date.

Text of former section 318 is reprinted below:

The Administration is authorized to extend the benefits of sections 303(c) and 317 to any small business investment company operating under authority of section 301(d) of this Act, and which is owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by the Administration.

¹⁰⁶Section 318 (as redesignated by § 208(h)(1)(E) of P.L. 104-208) added by § 18004(a) of PL 99-272, approved April 7, 1986 (100 Stat. 364).

¹⁰⁷Section 319 (as redesignated by § 208(h)(1)(E) of P.L. 104-208) completely rewritten by § 404 of PL 102-366, approved September 4, 1992 (106 Stat. 1013). Text of former § 321 follows:

- (a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of

SMALL BUSINESS INVESTMENT ACT OF 1958

(a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies¹⁰⁸ and guaranteed by the Administration under this Act, or participating securities

Issuance and guarantee of trust certificates.

debentures issued by small business investment companies, including companies operating under the authority of section 301(d), and guaranteed by the Administration under this Act: Provided, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

(b) 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 section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture 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 debenture represents in the trust or pool. Interest on prepaid or defaulted debentures 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 debentures constituting the pool.

(c) 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 section.

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

(e) (1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

(f) The Administration shall --

(1) provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;

(2) 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 poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

(3) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

(4) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

¹⁰⁸Phrase "including companies operating under the authority of section 301(d)" was deleted by § 208(h)(1)(F)(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

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which are issued by such companies and purchased and guaranteed pursuant to section 303(g): Provided, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures or guaranteed participating securities.

(b) 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 section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid; or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, 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 debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the Administration only through the date of payment of the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures or redemption, whether voluntary or involuntary, of all participating securities residing in the pool.

(c) 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 section.

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

(e) (1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

(f) (1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.¹⁰⁹

Registration of
trust certificates.

¹⁰⁹Paragraph 319(f)(1) (as renumbered) was rewritten by § 205(b)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Text of former 321(f)(1) is reprinted below:

Such central registration shall include with respect to each sale--

- (A) identification of each small business investment company;
- (B) the interest rate or prioritized payment rate paid by the small business investment company;

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(2) The Administrator shall contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States¹¹⁰ as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this Act, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) Prior to any sale, the Administrator shall require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument.

(4) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

(5)¹¹¹ Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

Sec. 320. PERIODIC ISSUANCE OF GUARANTEES AND TRUST CERTIFICATES¹¹²

15 USC 687m.

The Administration shall issue guarantees under section 303 and trust certificates under section 319 at periodic intervals of not less than every 12 months¹¹³ and shall do so at

Periodic issuance of guarantees and trust certificates.

- (C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;
- (D) identification of each purchaser of the trust certificate;
- (E) the price paid by the purchaser for the trust certificate;
- (F) the interest rate on the trust certificate;
- (G) the fee of any agent for carrying out the functions described in paragraph (2); and
- (H) such other information as the Administration deems appropriate.

¹¹⁰Phrase "or investments in obligations of the United States" added by § 208(h)(1)(F)(ii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

¹¹¹Paragraph 319(f)(5) added by § 205(b)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738).

¹¹²Section 320 (as redesignated by § 208(h)(1)(E) of P.L. 104-208) added by § 106(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2993).

¹¹³"Three months" changed to "6 months" by § 215(e) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603). "Six months" changed to "12 months" by § 2(d)(2) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

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such shorter intervals as its [sic] deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

TITLE IV -- GUARANTEES

PART A -- LEASE GUARANTEES

Sec. 401. AUTHORITY OF THE ADMINISTRATION¹¹⁴

15 USC 692.

(a) The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases.¹¹⁵ Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

Lease
guarantees.

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part,¹¹⁶ 2-1/2 per centum per annum of the minimum annual guaranteed rental payable under any guarantee lease: Provided, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The

Fees.

¹¹⁴Original title IV, which provided for the conversion of State chartered investment companies and State development companies into SBICs, was repealed by § 11(f) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756), and new Title IV, Lease Guarantees, was added by § 316(a) of PL 89-117, the Housing and Urban Development Act of 1965, approved Aug. 10, 1965 (79 Stat. 482). Title heading amended by § 911(a)(1) of PL 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812). [Beginning with FY 1977, no appropriation for new lease guarantees has been made.]

¹¹⁵Section 209 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271), extended the lease guarantee program to small business concerns generally by deleting the language which had limited the program to small concerns displaced by federally aided construction or eligible for title IV loans under the Economic Opportunity Act of 1964 (42 USC 2901 et seq.).

¹¹⁶The reference to "this part" inserted in lieu of "this title" by § 911(a)(2) of PL 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

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Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee -

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

Escrow.

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part,¹¹⁷ as the Administrator may in his discretion require.

Sec. 402. POWERS

15 USC 693.
Administrator,
powers.

Without limiting the authority conferred upon the Administrator and the Administration by section 201¹¹⁸ of this Act, the Administrator and the Administration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 5(b) of the Small Business Act with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

¹¹⁷The reference to "this part" inserted in lieu of "this title" by § 911(a)(2) of PL 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

¹¹⁸The "section 201" authority referred to was transferred from sec. 201 to new sec. 308(f) pursuant to PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359).

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Sec. 403. FUND [Repealed]¹¹⁹

[15 USC 694]

Sec. 404. POLLUTION CONTROL¹²⁰

15 USC 694-1.

(a) For purposes of this section, the term --

(1) "pollution control facilities" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

"Pollution control facilities."

(2) "person" includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

"Person."

(3) "qualified contract" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

"Qualified contract."

(b) The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business

Gua

¹¹⁹Sec. 403 repealed and remaining funds transferred to business loan and investment fund, §§ 4(c)(1) and (2) of the Small Business Act, by § 111(b) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995). Text of section 403 and its legislative history set out below:

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 401. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 401, shall be deposited in the fund. All expenses, excluding administrative expenses, pursuant to operations of the Administrator under section 401 shall be paid from the fund.

Sec. 403 rewritten by § 911(a)(3) of PL 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812), to increase the amount of the revolving fund and extend its use to the Surety Bond Guarantees under Part B of Title IV. Sec. 403 rewritten by § 6(a) of PL 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742), to establish a separate revolving fund to provide capital for Surety Bond Guarantees under Part B of Title IV. The amount authorized for the sec. 403 fund was previously set at \$10 million by § 911(a)(3) of PL 91-609, to be shared by the Surety Bond Program and the Lease Guarantee Program under Part A of Title IV. (See sec. 412 for the Surety Bond Program Revolving Fund.) Sec. 403 rewritten in its current language by § 103 of PL 95-89, approved Aug. 4, 1977, effective Oct. 1, 1977 (91 Stat. 553). The authorization language was transferred to § 20 of the Small Business Act; SBA was no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under the Real Estate Lease Guarantee Program and the authority to invest idle funds obtained as fees was also eliminated. "Section 401" was substituted for "this part" by § 103 of PL 94-305, approved June 4, 1976 (90 Stat. 663.)

¹²⁰Added by § 102 of PL 94-305, approved June 4, 1976 (90 Stat. 663). While this section has not been repealed, the program has been transferred to § 7(a)(12)(B) of the Small Business Act by § 111(c) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995), as a guaranteed financing program pursuant to that section.

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concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property shall be issued¹²¹ when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax,¹²² and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.

(2) Any such guarantee shall be for the full amount of payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

(c) The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount¹²³ be less than 1 per centum or more than 3-1/2 per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

Fees.

(d) In connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee --

(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in

¹²¹"Shall be issued" substituted for "may be issued" by § 115(1) of PL 98-473, approved Oct. 12, 1984 (98 Stat. 1967).

¹²²Clause following footnote signal added by PL 98-473, *supra*.

¹²³Fee bracketed between one and 3-1/2% (instead of prior ceiling of 3-1/2%) by § 115(3) of PL 98-473, approved Oct. 12, 1984, Joint Resolution [98 Stat. 1837 at 1967].

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escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

(f) Section 402 shall apply to the administration of this section.

Sec. 405. FUND¹²⁴

15 USC 694-2.
Pollution
control
revolving fund.

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 404. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 404 shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 404 shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.¹²⁵

PART B -- SURETY BOND GUARANTEES¹²⁶

¹²⁴Sec. 405 rewritten by § 104 of PL 95-89, approved Aug. 4, 1977, effective Oct. 1, 1977 (91 Stat. 553). The authorization language was transferred to § 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under this program and the authority to invest idle funds was ended.

¹²⁵Last sentence added by § 112 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

¹²⁶Part B added by § 911(a)(4) of PL 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

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Sec. 410. DEFINITIONS

15 USC 694a.

As used in this part --

- (1) the term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond. "Bid bond."
- (2) the term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him. "Payment bond."
- (3) the term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms. "Performance bond."
- (4) the term "surety" means the person who, (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.¹²⁷ "Surety."
- (5) the term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond. "Obligee."
- (6) the term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor. "Principal."
- (7) the term "prime contractor" means the person with whom the obligee has contracted to perform the contract. "Prime contractor."
- (8) the term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract. "Subcontractor."

Sec. 411. AUTHORITY OF THE ADMINISTRATION¹²⁸

15 USC 694b.

¹²⁷Sec. 410(4)(D) added by § 110 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

¹²⁸Sec. 411(a) substantially rewritten by § 202 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3007). For prior text, see §
353 (Rev. 9)

SMALL BUSINESS INVESTMENT ACT OF 1958

Surety
guarantee

(a) (1) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any contract up to \$1,250,000.¹²⁹

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety.

(3)¹³⁰ The Administration may authorize any surety, without further Administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

(4) No such guarantee may be issued, unless--

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5)¹³¹ (A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

111 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1758).

¹²⁹"\$1,250,000" inserted in lieu of "\$1,000,000", per § 18014 of PL 99-272, approved April 7, 1986 (100 Stat. 370).

¹³⁰Expiration date of this section changed to September 30, 1994, by § 216(a) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2823). [Section 206 of P.L. 100-590, approved Nov. 3, 1988, as amended by § 216(b) of P.L. 101-574, requires the Comptroller General of the U.S. to report on the success of this provision not later than March 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.]

¹³¹Paragraph 411(a)(5) added by § 206(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Section 206(b) of 104-208 provides that "[t]he amendments made by subsection (a) shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995."

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(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Program [sic] Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): Provided, however --

Indemnifi-
cation.

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2)¹³² a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3); and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).¹³³

Limitation.

(c)¹³⁴ Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum--

(1) not to exceed 70 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3);

(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in

¹³²Section 411(b)(2) was rewritten by § 203(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3008), which deleted existing paragraph 411(b)(3), inserted new paragraph (2), and renumbered existing paragraph (2) as paragraph (3). For prior version, see § 111 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1758).

¹³³Last sentence in § 411(b) added by § 203(a)(5) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3008).

¹³⁴Sec. 411(c) rewritten by section 203(b) of PL 100-590. For prior version, see § 115 of PL 96-302, approved July 2, 1980 (94 Stat. 833). Section 5(a) of PL 100-442, the Indian Financing Act of 1988, approved Sept. 22, 1988 (102 Stat. 1764) authorizes the Secretary of the Interior to provide a supplemental surety bond guarantee not to exceed 20% of any loss for any Indian individual or economic enterprise eligible for a surety guarantee under § 411 of the Small Business Investment Act. For text of PL 100-442, see the Related Provisions of Law section of this Handbook.

SMALL BUSINESS INVESTMENT ACT OF 1958

no event may the Administration make any duplicate payment pursuant to subsection (b) or any other subsection;

(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of a bond, if--

(A) the total amount of the contract at the time of execution of the bond or bonds is \$100,000 or less, or

(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act or to a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act¹³⁵; or

(4) determined pursuant to subsection (b), if applicable.

(d) The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

Regulations.

(e) Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if--

SBA not liable
if--

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

(2) the total contract amount at the time of execution of the bond or bonds exceeds \$1,250,000,¹³⁶

(3)¹³⁷ the surety has breached a material term or condition of such guarantee agreement, or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

(f) The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

¹³⁵ Reference to "qualified HUBZone small business concern" added by § 604(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2633).

¹³⁶"\$1,250,000" inserted in lieu of "\$1,000,000", per § 18014 of PL 99-272, approved April 7, 1986 (100 Stat. 370).

¹³⁷Paragraphs 411(e)(3) and (4) added by § 203(c) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3008).

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(g)¹³⁸ (1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

Reports to
SBA.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once each year by examiners selected and approved by the Administration.

Audit of
surety.

(h) The Administration shall administer this Part on a prudent and economically justifiable basis¹³⁹ and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

Fees.

(i) The provisions of section 402 shall apply in the administration of this section.

Sec. 412. FUND¹⁴⁰

15 USC 695.
Surety bond
guarantee
fund.

(a) There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.¹⁴¹

(b)¹⁴² Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

¹³⁸Paragraphs (1) and (3) of section 411(g) added by § 204 of PL 100-590, *supra*.

¹³⁹The phrase "administer this program on a prudent and economically justifiable basis" added to the original § 411 by § 11(a) of PL 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742). Subsection (h), formerly (c), entirely rewritten by said section, to distinguish between fees payable by small concerns, and premiums paid by sureties, and to eliminate several sentences.

¹⁴⁰Sec. 412, added by § 6(a)(4) of PL 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742), was rewritten by § 105 of PL 95-89, approved Aug. 4, 1977, effective Oct. 1, 1977 (91 Stat. 553). The authorization language was transferred to § 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under this program and the authority to invest idle funds was modified.

¹⁴¹Last sentence, repealed by § 111 of PL 96-302, approved July 2, 1980 (94 Stat. 833), authorized investment of funds not needed for operating expenses or claims payments to be invested in U.S. bonds and U.S. guaranteed obligations, except for moneys provided as capital. See § 6(a) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742).

¹⁴²Existing § 412 redesignated (a) and subsection 412(b) added by § 208 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3009).

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TITLE V -- LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Sec. 501 STATE DEVELOPMENT COMPANIES.

15 USC 695.

State
development
companies.

(a)¹⁴³ The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this title.

(b) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this Act. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(c) The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after the date of the enactment of this Act, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d)¹⁴⁴ In order to qualify for assistance under this title, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives--

(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

(3) the achievement of one or more of the following public policy goals:

(A) business district revitalization,

(B) expansion of exports,

¹⁴³Subsections 501(a) and (b) redesignated as 501(b) and (c), respectively, and new subsection 501(a) added by § 115(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2997). Section 115(b)(1) added the heading "State development companies". Subsection 501(a) rewritten by § 214(a) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821).

¹⁴⁴New subsection 501(d) added by § 214(b) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821).

- (C) expansion of minority business development,
- (D) rural development,
- (E)¹⁴⁵ expansion of small business concerns owned and controlled by veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)), especially service-disabled veterans, as defined in such section 3(q).
- (F) enhanced economic competition, including the advancement of technology, plant retooling, conversion to robotics, or competition with imports,
- (G) changes necessitated by Federal budget cutbacks, including defense related industries, or
- (H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

Sec. 502. LOANS FOR PLANT ACQUISITION, CONSTRUCTION, CONVERSION, AND EXPANSION

15 USC 696.

The Administration may, in addition to its authority under section 501, make loans for plant acquisition,¹⁴⁶ construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: Provided, however, That the foregoing powers shall be subject to the following restrictions and limitations:

(1)¹⁴⁷ USE OF PROCEEDS. - The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

¹⁴⁵Subparagraphs 501(d)(3)(E) - (G) renumbered as (F) - (H), respectively, and new subparagraph 501(d)(3)(E) added by § 405 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

¹⁴⁶The word "acquisition" added by § 108(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

¹⁴⁷Former para. (1) and (5) repealed and former para. (2), (3), and (4) renumbered as para (1), (2), and (3), respectively, by § 1909 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). Effective date is Oct. 1, 1981 per § 1918 of PL 97-35. Former para. 1 required loans to be "so secured as reasonably to assure repayment" and limited loan guarantees to 90%. Former para. 5 limited loans to 25 years plus construction period, and an additional 10 years if needed for orderly liquidation. For full text see § 502 of PL 85-699, approved Aug. 21, 1958 (72 Stat. 697). Paragraph 502(1) was rewritten by § 221(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603). Text of former paragraph 502(1) is reprinted below:

(2) Loans made by the Administration under this section shall be limited to \$750,000¹⁴⁸ for each such identifiable small-business concern,¹⁴⁹ except loans meeting the criteria specified in section 501(d)(3) shall be limited to \$1,000,000 for each such identifiable small business concern.

(3)¹⁵⁰ CRITERIA FOR ASSISTANCE.-

(A) IN GENERAL.-Any development company assisted under this section or section 503 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

Criteria
for assis-
tance.

(B) COMMUNITY INJECTION FUNDS.-

Com-
munity
injection
funds.

(i) SOURCES OF FUNDS.-Community injection funds may be derived, in whole or in part, from-

The proceeds of any such loan shall be used solely by such borrower to assist an identifiable small-business concern and for a sound business purpose approved by the Administration.

¹⁴⁸This limitation was raised from "\$500,000" to "\$750,000" by § 8007(b) of PL 100-418, approved August 23, 1988 (102 Stat. 1561). Section 8007(c) of PL 100-418 provides that:

The Administrator of the Small Business Administration shall report to the Committees on Small Business of the House of Representatives and the Senate within 6 months after the date of enactment of this title as to the viability of creating cooperative Federal-State guarantee programs, particularly for purposes of export financing, to encourage States to coinsure Federal loans, thus permitting the Federal Government to reduce its exposure.

¹⁴⁹Phrase following footnote signal added by § 214(c) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2822).

¹⁵⁰Subsection 502(3) rewritten by § 202(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-734). Text of former subsection 502(3) is reprinted below:

Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from --

- (A) State or local governments;
- (B) banks or other financial institutions;
- (C) foundations or other not-for-profit institutions; or
- (D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this title.

- (I) State or local governments;
- (II) banks or other financial institutions;
- (III) foundations or other not-for-profit institutions; or
- (IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title.

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(ii) **FUNDING FROM INSTITUTIONS.**-Not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) **FUNDING FROM A SMALL BUSINESS CONCERN.**-The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title shall provide-

(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

(D)¹⁵⁰ **SELLER FINANCING.** - Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) **COLLATERALIZATION.** - The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this title, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case by case basis, that additional security is necessary to protect the interest of the Government.

(4)¹⁵¹ If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5)¹⁵² **LIMITATION ON LEASING.** - In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small business to 1 or more other tenants, if the assisted small

¹⁵⁰ Subparagraphs 502(3)(D) and (E) were added by § 221(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

¹⁵¹ Section 502(4) added by § 116(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2998). Heading for § 502 added by § 116(b) of PL 100-590.

¹⁵² Paragraph 502(5) added by § 221(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604).

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business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

Sec. 503. DEVELOPMENT COMPANY DEBENTURES¹⁵³

15 USC 697.

(a) (1) Except as provided in subsection (b), the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

Development company debentures, guarantee by SBA.

(2) Such guarantees may be made on such terms and conditions as the Administration may by regulation determine to be appropriate: Provided, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister: Provided further, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.¹⁵⁴

(3) The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this subsection.

(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection; may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.¹⁵⁵

(b) No guarantee may be made with respect to any debenture under subsection (a) unless --

Terms and conditions of guarantee.

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 502;

¹⁵³New sec. 503 added by § 113 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

¹⁵⁴Provisos added by section 114 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2997).

¹⁵⁵PL 98-8, "Emergency Jobs Appropriations, 1983," approved March 24, 1983 (97 Stat. 13), provided for fiscal year 1983 in part:

... the Administration may not decline to participate in a project under section 503 of the Small Business Investment Company (sic) Act of 1958 because other sources of financing for the project include or are collateralized by obligations described in section 103(b) of the Internal Revenue Code of 1954: And provided further, That loans made with the proceeds of debentures guaranteed under section 503 of said Act shall be subordinated to (such) obligations ...

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- (2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;
- (3) the interest rate on such debentures is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 303(b);
- (4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);
- (5) the amount of any loan to be made from such proceeds does not exceed an amount equal to 50 percent of the cost of the project with respect to which such loan is made; and
- (6) the Administration approves each loan to be made from such proceeds.
- (7)¹⁵⁶ with respect to each loan made from the proceeds of such debenture, the Administration--

(A)¹⁵⁷ assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed the lesser of--

(i) 0.9375 percent per year of the outstanding balance of the loan; and

(ii) the minimum amount necessary to reduce the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this Act to zero; and [2 USC 661a].

¹⁵⁶ Paragraph 503(b)(7) added by § 6 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297). The amount of the fee was changed from 0.125 percent per year of the outstanding balance of the loan and clause (ii) was added by § 202(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735). For information on applicability of this amendment, see footnote to § 7(a)(2) of the Small Business Act.

¹⁵⁷ Subparagraph 503(b)(7)(A) was rewritten by § 222(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604). Text of former subparagraph (A) is reprinted below:

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount equal to the lesser of:

(i) 0.9375 percent per year of the outstanding balance of the loan; or

(ii) such percentage per year of the outstanding balance of the loan as the Administrator may determine to be necessary to reduce 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 debentures under this Act to an amount that, taking into consideration any available appropriated funds, would permit the Administration to purchase or guarantee \$2,000,000,000 of debentures in fiscal year 1997;

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(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

(c)¹⁵⁸ (1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

(2) Notwithstanding the provisions of the constitution or 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 commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 504 which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator of the Small Business Administration under the authority of this section.

Interest rates

(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 504 which is not funded by a debenture guaranteed under this section.

(d)¹⁵⁹ CHARGES FOR ADMINISTRATION EXPENSES.-

Charges for
Administratio
expenses.

(1) LEVEL OF CHARGES.-The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a).

(2) PARTICIPATION FEE.-The Administration shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 502(3)(B)(i). Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

Participation
fee.

(3) DEVELOPMENT COMPANY FEE.-The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development

Development
company fee.

¹⁵⁸Subsections 503(c) and (d) redesignated as 503(d) and (e), respectively, and new subsection 503(c) added by § 112(c)(1) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2996). Section 112(c)(2) of PL 100-590 provides that new subsection 503(c) shall be repealed on October 1, 1990. Section 3 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2140), extends the period to Oct. 1, 1994.

¹⁵⁹Subsection 503(d) rewritten by § 202(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735). Text of former 503(d) is reprinted below:

The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a).

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company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

[2 USC 661a].

(e) (1) For purposes of this section, the term "qualified State or local development company" means any State or local development company which, as determined by the Administration, has --

"Qualified State or local development company."

(A) a full-time professional staff;

(B) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(C) a board of directors, or membership, which meets on a regular basis to make management decisions for such company, including decisions relating to the making and servicing of loans by such company.

(2)¹⁶⁰ A company in a rural area shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

(3)¹⁶¹ Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under Section 7(a) of the Small Business Act, to service such loans and to charge a reasonable fee for servicing such loans.

(f)¹⁶² EFFECTIVE DATE.-The fees authorized by subsections (b) and (c) shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 2000¹⁶³.

(g)¹⁶⁴ CALCULATION OF SUBSIDY RATE.-All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this Act.

Calculation of subsidy rate.

[2 USC 661a].

¹⁶⁰Section 503(e) renumbered para. 1 by § 117(a)(1) and (2), and § 503(e)(2) added by § 117(a)(2) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2998).

¹⁶¹New paragraph 503(e)(3) added by § 8 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2144).

¹⁶²Subsection 503(f) added by subsection 202(d) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735).

¹⁶³Date changed from 1997 by § 222(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604).

¹⁶⁴Subsection 503(g) added by subsection 202(e) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735).

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(h)¹⁶⁵ REQUIRED ACTIONS UPON DEFAULT.-

Required
upon default.

(1) INITIAL ACTIONS.-Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall-

- (A) take all necessary steps to bring such a loan current; or
- (B) implement a formal written deferral agreement.

(2) PURCHASE OR ACCELERATION OF DEBENTURE.-Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the administration [sic] shall take all necessary steps to purchase or accelerate the debenture.

(3) PREPAYMENT PENALTIES.-With respect to the portion of any project derived from funds set forth in section 502(3), the Administration-

Prepayment
penalties.

- (A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;
- (B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and
- (C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

Sec. 504. PRIVATE DEBENTURE SALES¹⁶⁶

15 USC 697a.

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 503 of this title as follows --

Sale of
debentures.

(1) Of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed \$200,000,000;

(2) Of the program levels otherwise authorized by law for fiscal years 1987 and 1988, an amount not to exceed \$425,000,000.

(3)¹⁶⁷ All of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

¹⁶⁵Subsection 503(h) added by § 203 of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-736).

¹⁶⁶Section 504 was rewritten and in subsection 504(b) "this title" substituted for "Small Business Investment Act of 1958" by § 112(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2996), which provided a permanent extension of the pilot program established by § 18008(a) of PL 99-272, approved April 7, 1986 (100 Stat. 366).

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(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire--

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 503 of this title and which is being sold pursuant to the provisions of the program authorized in this section;

(2) any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

Sec. 505. POOLING OF DEBENTURES¹⁶⁸

15 USC 697b.

(a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this Act: Provided, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

Pooling of debentures.

(b) 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 section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture 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 debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only

¹⁶⁷Section 2(b) of PL 100-72, approved July 11, 1987 (101 Stat. 477), changed authorization in 504(a)(2) from \$295,000,000 to current amount. Section 2(c) of PL 100-72 added new subsection 504(a)(3).

¹⁶⁸Section 505 added by § 18008(c) of PL 99-272, approved April 7, 1986 (100 Stat. 367). Title changed from "Authority for issuance of trust certificates" by section 111(d)(2) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995). Section 111(d)(1) of PL 100-590 corrected typographical error, from "all of a" to "all or a" in second line of § 505(a).

Section 18008(d) of PL 99-272 provides:

(1) Notwithstanding any law, rule, or regulation, within 60 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 505(f)(1) of the Small Business Investment Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 505(f)(2) of such Act.

(2) Notwithstanding any law, rule or regulation, within 60 days after the date of enactment of this Act, the Small Business Administration also 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 sections 504 and 505 of the Small Business Investment Act.

SMALL BUSINESS INVESTMENT ACT OF 1958

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 debentures constituting the pool.

(c) 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 section.

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

(e) (1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

(f) (1)¹⁶⁹ The Administration shall --

(A) provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;

(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 poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

(D) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

¹⁶⁹Paragraphs (1) - (4) renumbered (A) - (D), respectively, and paragraph (2) added by § 205(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738).

SMALL BUSINESS INVESTMENT ACT OF 1958

(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

Sec. 506. RESTRICTIONS ON DEVELOPMENT COMPANY ASSISTANCE¹⁷⁰

15 USC 697c.

Notwithstanding any other provisions of law: (1) on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this title or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this title; and (2) before such date, no department or agency of the United States Government which provides funding to any development company shall impose any condition, priority or restriction upon the type of small business which receives financing under this title nor shall it include any condition or impose any requirement, directly or indirectly upon any recipient of assistance under this title: Provided, That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.

Restrictions on
development
company
assistance.

Sec. 507. ACCREDITED LENDERS PROGRAM¹⁷¹

15 USC 697d.

Accredited
Lenders Program.

(a) ESTABLISHMENT.--The Administration is authorized to establish an Accredited Lenders Program for qualified State and local development companies that meet the requirements of subsection (b).

(b) REQUIREMENTS.--The Administration may designate a qualified State or local development company as an accredited lender if such company--

¹⁷⁰Section 506 added by § 117(b) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2998). Section 117(c) of PL 100-590 provides that:

Not later than one hundred and eighty days after the effective date of this Act, the Small Business Administration shall report to the Small Business Committees of the Senate and the House of Representatives on the amount and nature of all financial assistance or income being received by certified development companies from sources other than the Small Business Administration or those being assisted by the programs authorized in title V of the Small Business Investment Act of 1958. The report shall include any conditions or restrictions imposed on the development companies due to such financial assistance, a comparison of all sources of income which comprise the development companies' budgets, an analysis of the financial impact of various sources of financial assistance, and the feasibility of restricting assistance received from the Federal Government solely to Small Business Administration funding.

¹⁷¹Section 507 added by § 212(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4183). Section 212(b) requires that the Administration promulgate final regulations implementing the section within 120 days of the enactment. Section 212(c) requires that:

Not later than 1 year after the effective date of regulations promulgated under subsection (b), and biennially thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Such report shall include data on the number of development companies designated as accredited lenders, their debenture guarantee volume, their loss rates, the average processing time on their guarantee applications, and such other information as the Administration deems appropriate.

SMALL BUSINESS INVESTMENT ACT OF 1958

(1) has been an active participant in the Development Company Program authorized by sections 502, 503, and 504 for not less than the preceding 12 months;

(2) has well-trained, qualified personnel who are knowledgeable in the Administration's lending policies and procedures for such Development Company Program;

(3) has the ability to process, close, and service financing for plant and equipment under such Development Company Program;

(4) has a loss rate on the company's debentures that is reasonable and acceptable to the Administration;

(5) has a history of submitting to the Administration complete and accurate debenture guaranty application packages; and

(6) has demonstrated the ability to serve small business credit needs for plant and equipment through the Development Company Program.

(c) **EXPEDITED PROCESSING OF LOAN APPLICATIONS.**--The Administration shall develop an expedited procedure for processing a loan application or servicing action submitted by a qualified State or local development company that has been designated as an accredited lender in accordance with subsection (b).

(d) **SUSPENSION OR REVOCATION OF DESIGNATION.**--

(1) **IN GENERAL.**--The designation of a qualified State or local development company as an accredited lender may be suspended or revoked if the Administration determines that--

(A) the development company has not continued to meet the criteria for eligibility under subsection (b); or

(B) the development company has failed to adhere to the Administration's rules and regulations or is violating any other applicable provision of law.

(2) **EFFECT.**--A suspension or revocation under paragraph (1) shall not affect any outstanding debenture guarantee.

(e) **DEFINITION.**--For purposes of this section, the term "qualified State or local development company" has the same meaning as in section 503(e).

"Qualified State or local development company."

Sec. 508. **PREMIER CERTIFIED LENDERS PROGRAM**¹⁷²

15 USC 697e.

¹⁷²Section 508 added by § 217(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4185). Section 217(b) of P.L. 103-403 provides for the repeal of § 508 effective October 1, 1997. The program was extended through October 1, 2000, by § 223(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

SMALL BUSINESS INVESTMENT ACT OF 1958

Premier
Certified
Lenders
Program.

(a) ESTABLISHMENT.--On a pilot program basis, the Administration may establish a Premier Certified Lenders Program for¹⁷³ certified development companies that meet the requirements of subsection (b).

(b) REQUIREMENTS.--

(1) APPLICATION.--To be eligible to participate in the Premier Certified Lenders Program established under subsection (a), a certified development company shall prepare and submit to the Administration an application at such time, in such manner, and containing such information as the Administration may require.

(2) DESIGNATION.--The Administration may designate a certified development company as a premier certified lender¹⁷⁴

(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) if the company has a history of—

(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

(ii) of properly closing section 504 loans and servicing its loan portfolio;

(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section; and

¹⁷³ Phrase "not more than 15" was deleted by § 223(a)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604).

¹⁷⁴ Subparagraphs 508(b)(2)(A) and (B) were rewritten by § 223(a)(2)(ii) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604). Former subparagraphs (A) and (B) (with introductory language from the end of paragraph 508(b)(2)) are reprinted below:

if such company--

(A) has been an active participant in the accredited lenders program during the 12-month period preceding the date on which the company submits an application under paragraph (1), except that, prior to January 1, 1996, the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) has a history of submitting to the Administration adequately analyzed debenture guarantee application packages; and

SMALL BUSINESS INVESTMENT ACT OF 1958

(D)¹⁷⁵ the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c)(2) is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3)¹⁷⁶ **APPLICABILITY OF CRITERIA AFTER DESIGNATION.** - The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c)¹⁷⁷ **LOSS RESERVE.** -

(1) **ESTABLISHMENT.** - A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

(2) **AMOUNT.** - The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C).

¹⁷⁵Subparagraph 508(b)(2)(D) added by § 223(a)(2)(A)(iv) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

¹⁷⁶ Paragraph 508(b)(3) added by § 223(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

¹⁷⁷ Subsection 508(c) rewritten by § 223(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605). Text of former subsection 508(c) is reprinted below:

LOSS RESERVE.--

(1) **ESTABLISHMENT.--**A company designated as a premier certified lender shall establish a loss reserve for financings approved pursuant to this section.

(2) **AMOUNT.--**The amount of the loss reserve shall be based upon the greater of--

(A) the historic loss rate on debentures issued by such company; or

(B) 10 percent of the amount of the company's exposure as determined under subsection (b)(2)(C).

(3) **ASSETS.--**The loss reserve shall be comprised of segregated assets of the company which shall be securitized in favor of the Administration.

(4) **CONTRIBUTIONS.--**The company shall make contributions to the loss reserve in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent not later than 1 year after a debenture is closed.

(C) 25 percent not later than 2 years after a debenture is closed.

SMALL BUSINESS INVESTMENT ACT OF 1958

(3) ASSETS. - Each loss reserve established under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) CONTRIBUTIONS. - The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

(5) REPLENISHMENT. - If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's 10 percent share of the loss as provided in subsection (b)(2)(C). If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

(6) DISBURSEMENTS. - The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(d) LOAN APPROVAL AUTHORITY.--

(1) IN GENERAL.--Notwithstanding section 503(b)(6), and subject to such terms and conditions as the Administration may establish, the Administration may permit a company designated as a premier certified lender under this section¹⁷⁸ to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate

¹⁷⁸Phrase "to approve loans" deleted and language before "that are funded" added by § 223(a)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

SMALL BUSINESS INVESTMENT ACT OF 1958

loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

(2) SCOPE OF REVIEW.--The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 503(a), but such final approval shall not include review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(e) REVIEW.--After the issuance and sale of debentures under this section, the Administration, at intervals of greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (f), but such review shall not affect any outstanding debenture guarantee.

(f) SUSPENSION OR REVOCATION.--The designation of a certified¹⁷⁹ development company as a premier certified lender may be suspended or revoked if the Administration determines that the company--

- (b);
- (1) has not continued to meet the criteria for eligibility under subsection
 - (2) has not established or maintained the loss reserve required under subsection (c);
 - (3) is failing to adhere to the Administration's rules and regulations; or
 - (4) is violating any other applicable provision of law.

(g) EFFECT OF SUSPENSION OR REVOCATION. -- A suspension or revocation under subsection (f) shall not affect any outstanding debenture guarantee.

(h)¹⁸⁰ PROGRAM GOALS. -- Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than

¹⁷⁹ "State or local" replaced by "certified" by § 223(a)(5) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

¹⁸⁰ Subsection 508(h), which required the promulgation of regulations within 180 days after the date of the enactment of the section, was rewritten by § 223(a)(7) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606). Subsection 223(b) of P.L. 105-135 provides:

- (b) REGULATIONS - The Administrator shall---
- (1) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry the amendments made by subsection (a); and
 - (2) not later than 180 days after the date of enactment of this Act, issue program guidelines and fully implement the amendments made by subsection (a).

SMALL BUSINESS INVESTMENT ACT OF 1958

50 percent of the loan applications for assistance under section 504 pursuant to the program authorized under this section.

(i) **REPORT.**--Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include--

Report to
Congressional
committees.

- (1) the number of certified development companies designated as premier certified lenders;
- (2) the debenture guarantee volume of such companies;
- (3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and
- (4) such other information as the Administration deems appropriate.

Sec. 509 **PREPAYMENT OF DEVELOPMENT COMPANY DEBENTURES.**¹⁸¹

15 USC 697f.

¹⁸¹Section 509 added by § 503 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4199). Section 502, entitled "Intention of Congress", provides:

(a) **IN GENERAL.**--The Small Business Administration shall fully utilize the \$30,000,000 appropriated in Public Law 103-317 to reduce, in accordance with this title and the amendments made by this title, prepayment penalties imposed in connection with debentures issued under--

- (1) section 303 or 503 of the Small Business Investment Act of 1958, which have been purchased by the Federal Financing Bank; and
- (2) title III to companies operating under section 301(d) of such Act, which have been purchased by the Small Business Administration.

(b) **EQUAL OPPORTUNITY.**--In order to provide an equal opportunity to participate in the program authorized under this title, the Small Business Administration shall afford each borrower or issuer of a debenture subject to this title, not less than 45 days to elect to participate and to provide an earnest money deposit. The Administration shall subsequently allow a period of not less than 4 months, during which those borrowers or issuers that elect to participate shall be allowed to complete the prepayment process.

(c) **RESTRICTIONS ON PARTICIPATION.**--In no event shall the Small Business Administration--

- (1) allow any borrower or issuer to participate in the program if the borrower or issuer fails to--
 - (A) make a timely election and provide the deposit on a timely basis; or
 - (B) complete the prepayment process within the required time; or
- (2) allow any borrower or issuer to participate in the program at a percentage rate other than the rate finally determined to be applicable to all other borrowers or issuers with similar terms of years.

SMALL BUSINESS INVESTMENT ACT OF 1958

(a) IN GENERAL.--

Prepayment
development
company
debentures.

(1) PREPAYMENT AUTHORIZED.--Subject to the requirements set forth in subsection (b), an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this Act may, at the election of the borrower (in the case of a loan under section 503) or the issuer (in the case of a small business investment company) and with the approval of the Administration, prepay such debenture in accordance with the provisions of this section.¹⁸²

(2) PROCEDURE.--

(A) IN GENERAL.--In making a prepayment under paragraph (1)--

(i) the borrower (in the case of a loan under section 503) or the issuer (in the case of a small business investment company) shall pay to the Federal Financing Bank an amount that is equal to the sum of the unpaid principal balance due on the debenture as of the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in subparagraph (B); and

(ii) the Administration shall pay to the Federal Financing Bank the difference between the repurchase premium paid by the borrower under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

(B) REPURCHASE PREMIUM.--

(i) IN GENERAL.--For purposes of subparagraph (A)(i), the repurchase premium is the amount equal to the product of--

(I) the unpaid principal balance due on the debenture on the date of the prepayment; and

(II) the applicable percentage rate, as determined in accordance [with] clauses (ii) and (iii).

(ii) APPLICABLE PERCENTAGE RATE.--For purposes of clause (i)(II), the applicable percentage rate means--

(I) with respect to a 10-year term loan, 8.5 percent;

¹⁸²The following sentence was deleted from paragraph 509(a)(1) by § 208 (h)(1)(H)(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747):

A small business investment company operating under the authority of section 301(d) that has issued a debenture that was purchased by and is held by the Administration, may, under the same terms and conditions, prepay such debenture and the penalty as provided in this section, and shall thereafter be immediately eligible to apply for additional assistance from the Administration.

SMALL BUSINESS INVESTMENT ACT OF 1958

- (II) with respect to a 15-year term loan, 9.5 percent;
- (III) with respect to a 20-year term loan, 10.5 percent; and
- (IV) with respect to a 25-year term loan, 11.5 percent.

(iii) **ADJUSTMENTS TO APPLICABLE PERCENTAGE RATE.**--The percentage rates described in clause (ii) shall be increased or decreased by the Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103-317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

(b) **REQUIREMENTS.**--For purposes of subsection (a), the requirements of this subsection are that--

(1) the debenture is outstanding and neither the loan that secures the debenture, if any, nor the debenture is in default on the date on which the prepayment is made;

(2) State, local, or personal funds, or the proceeds of a refinancing in accordance with subsection (d) of this section under the programs authorized by this title, are used to prepay or roll over the debenture; and

(3) with respect to a debenture issued under section 503, the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

(c) **NO PREPAYMENT FEES OR PENALTIES.**--No fees or penalties other than those specified in this section may be imposed on the issuer, the borrower, the Administration, or any fund or account administered by the Administration as the result of a prepayment under this section.

(d) **REFINANCING LIMITATIONS.**--

(1) **IN GENERAL.**--The refinancing of a debenture under sections 504 and 505, in accordance with subsection (b)(2)--

(A) shall not exceed the amount necessary to prepay existing debentures, including all costs associated with the refinancing and any applicable prepayment penalty or repurchase premium; and

SMALL BUSINESS INVESTMENT ACT OF 1958

(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 504 and 505 and the rules and regulations promulgated thereunder, including rules and regulations governing payment of authorized expenses, commissions, fees, and discounts to brokers and dealers in trust certificates issued pursuant to section 505.

(2) **JOB CREATION.**--An applicant for refinancing under section 504 of a loan made pursuant to section 503 shall not be required to demonstrate that a requisite number of jobs will be created with the proceeds of a refinancing.

(3) **LOAN PROCESSING FEE.**--To cover the cost of loan packaging, processing, and other administrative functions, a development company that provides refinancing under subsection (b)(2) may impose a one-time loan processing fee, not to exceed 0.5 percent of the principal amount of the loan.

(4) **NEW DEBENTURES.**--Issuers of debentures under title III may issue new debentures in accordance with such title in order to prepay existing debentures as authorized in this section.

(5) **PRELIMINARY NOTICE.**--

(A) **IN GENERAL.**--The Administration shall use certified mail and other reasonable means to notify each eligible borrower of the prepayment program provided in this title. Each preliminary notice shall specify the range and dollar amount of repurchase premiums which could be required of that borrower in order to participate in the program. In carrying out this program, the Administration shall provide a period of not less than 45 days following the receipt of such notice by the borrower during which the borrower must notify the Administration of the borrower's intent to participate in the program. The Administration shall require that a borrower who gives notice of its intent to participate to make an earnest money deposit of \$1,000 which shall not be refundable but which shall be credited toward the final repurchase premium.

(B) **DEFINITION.**--For purposes of this paragraph, the term "borrower", in the case of a small business investment company or a specialized small business investment company, means "issuer".

"Borrower."

(6) **FINAL NOTICE.**--Based upon the response to the preliminary notice under paragraph (5), the Administration shall make a final computation of the necessary prepayment premiums and shall notify each qualified respondent of the results of such computation. Each qualified respondent shall be afforded not less than 4 months to complete the prepayment.

(e) **DEFINITIONS.**--For purposes of this section--

(1) the term "issuer" means--

"Issuer."

(A) the qualified State or local development company that issued a debenture pursuant to section 503, which has been purchased by the Federal Financing Bank; and

SMALL BUSINESS INVESTMENT ACT OF 1958

(B) a small business investment company licensed pursuant to section 301¹⁸³; or

(2) the term "borrower" means a small business concern whose loan secures a debenture issued pursuant to section 503.

"Borrower."

(f) REGULATIONS.—Not later than 30 days after the date of enactment of this section, the Administration shall promulgate such regulations as may be necessary to carry out this section.

(g) AUTHORIZATION.—There are authorized to be appropriated \$30,000,000 to carry out the provisions of the Small Business Prepayment Penalty Relief Act of 1994.

TITLE VI – CHANGES IN FEDERAL RESERVE AUTHORITY

[Omitted as no longer current.]

TITLE VII -- CRIMINAL PENALTIES

(This title amends the U.S. Code to include certain actions by persons affiliated with or dealing with SBICs as Federal crimes. The provisions have been amended from time to time to include various agencies. The pertinent parts of the affected sections, 18 U.S.C. 212, 213, 215, 657, 1006 and 1014, are set out below for information purposes only).

18 USC § 212. Offer of loan or gratuity to bank examiner.

Whoever, being an officer, director or employee . . . of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such . . . corporation . . . shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

The provisions of this section and section 218¹⁸⁴ of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured banks, or National Agricultural Credit Corporations, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearing-house association or by the directors of a bank.

¹⁸³Reference to "subsection (c) or (d) of section 301" changed to "section 301" by § 208(h)(1)(H)(ii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

¹⁸⁴"Section 218", referred to in this section, is former § 218 prior to its redesignation as 18 USC 213 by § 1(d) of PL 87-849, approved Oct. 23, 1962 (76 Stat. 1125).

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18 USC § 213. Acceptance of a loan or gratuity by bank examiner.¹⁸⁵

Whoever, being an examiner . . . of small business investment companies, accepts a loan or gratuity from any . . . corporation . . . or organization examined by him or from any person connected therewith, shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.

18 USC § 215. Receipt of commissions or gifts for procuring loans.¹⁸⁶

(a) Whoever--

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined not more than \$1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed \$100, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b)¹⁸⁷[Transferred].

(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

18 USC § 657. Lending, credit and insurance institutions.

¹⁸⁵Former 18 USC 218 was redesignated to be current 18 USC 213 by § 1(d) of PL 87-849, approved Oct. 23, 1962 (76 Stat. 1125).

¹⁸⁶18 USC 215 substantially rewritten by § 1107 of PL 98-473, approved Oct. 12, 1984 (98 Stat. 2145).

¹⁸⁷Subsection (b)(6), which defined the term "financial institution" as including a small business investment company, was transferred to 18 USC § 20 by § 962(e)(1) of PL 101-73, approved Aug. 9, 1989 (103 Stat. 503).

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Whoever, being an officer, agent or employee of or connected in any capacity with . . . any small business investment company, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted [sic] to its care, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year or both.

TITLE VII

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18 USC § 1006. Federal credit institution entries, reports and transactions.

Whoever, being an officer, agent or employee of or connected in any capacity with . . . any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than \$1,000,000 or imprisoned not more than 20 years, or both.

18 USC § 1014. Loan and credit applications generally; renewals and discounts; crop insurance.

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . a small business investment company . . . upon any application, advance, discount purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.