

SMALL BUSINESS LENDING ENHANCEMENT ACT OF 1995

SEPTEMBER 28, 1995.—Ordered to be printed

Mrs. MEYERS of Kansas, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 895]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 895), to amend the Small Business Act to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the Administration, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Lending Enhancement Act of 1995".

SEC. 2. REDUCED LEVEL OF PARTICIPATION IN GUARANTEED LOANS.

Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended to read as follows:

"(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

"(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$100,000; or

“(ii) 80 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$100,000.

“(B) REDUCED PARTICIPATION UPON REQUEST.—

“(i) IN GENERAL.—The guarantee percentage specified by subparagraph (A) for any loan under this subsection may be reduced upon the request of the participating lender.

“(ii) PROHIBITION.—The Administration shall not use the guarantee percentage requested by a participating lender under clause (i) as a criterion for establishing priorities in approving loan guarantee requests under this subsection.

“(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

“(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

“(ii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term ‘Preferred Lenders Program’ means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

“(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

“(II) authority to service and liquidate such loans.”.

SEC. 3. GUARANTEE FEES.

(a) AMOUNT OF FEES.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended to read as follows:

“(18) GUARANTEE FEES.—

“(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender and may be charged to the borrower, in an amount equal to the sum of—

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

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

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

“(II) \$250,000; and

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

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

“(II) \$500,000.

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

(b) REPEAL OF PROVISIONS ALLOWING RETENTION OF FEES BY LENDERS.—Section 7(a)(19) of the Small Business Act (15 U.S.C. 636(a)(19)) is amended—

(1) in subparagraph (B)—

(A) by striking “shall (i) develop” and inserting “shall develop”; and

(B) by striking “, and (ii)” and all that follows through the end of the subparagraph and inserting a period; and

(2) by striking subparagraph (C).

SEC. 4. ESTABLISHMENT OF ANNUAL FEE.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

“(23) ANNUAL FEE.—

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

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

(b) CONFORMING AMENDMENT.—Section 5(g)(4)(A) of the Small Business Act (15 U.S.C. 634(g)(4)(A)) is amended—

(1) by striking the first sentence and inserting the following: “The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration.”; and

(2) by striking “fees” each place such term appears and inserting “fee”.

SEC. 5. NOTIFICATION REQUIREMENT.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

“(24) NOTIFICATION REQUIREMENT.—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before

making any significant policy or administrative change affecting the operation of the loan program under this subsection.”.

SEC. 6. DEVELOPMENT COMPANY DEBENTURES.

Section 503(b) of the Small Business Investment Act of 1958 (15 U.S.C. 697(b)) is amended—

- (1) in paragraph (5), by striking “and” at the end;*
- (2) in paragraph (6), by striking the period at the end and inserting “; and”; and*
- (3) by adding at the end the following new paragraph:*
“(7) with respect to each loan made from the proceeds of such debenture, the Administration—

“(A) assesses and collects a fee, which shall be payable by the borrower, in an amount equal to 0.125 percent per year of the outstanding balance of the loan; and

“(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).”.

SEC. 7. PILOT PREFERRED SURETY BOND GUARANTEE PROGRAM EXTENSION.

Section 207 of the Small Business Administration Reauthorization and Amendment Act of 1988 (15 U.S.C. 694b note) is amended by striking “September 30, 1995” and inserting “September 30, 1997”.

SEC. 8. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act do not apply with respect to any loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act.

(b) EXCEPTIONS.—The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act, if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same.

JAN MEYERS,
 PETER G. TORKILDSEN,
 JIM LONGLEY,
 JOHN J. LAFALCE,
 GLENN POSHARD,

Managers on the Part of the House.

CHRISTOPHER S. BOND,
 CONRAD BURNS,
 PAUL COVERDELL,
 DALE BUMPERS,
 SAM NUNN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 895) to amend the Small Business Act to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the Administration, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The conference agreement establishes new guarantee levels, program fees, and administrative provisions governing the Small Business Administration's 7(a) Guaranteed Business Loan Program and the 504 Certified Development Company Program.

The conference agreement lowers the guarantee rate for all 7(a) loans to 75%, except for loans of \$100,000 or less, which will have a guarantee rate of 80%. As part of this overall change, the guarantee rate for Export Working Capital Program loans will be decreased to be consistent with other 7(a) loans. The conferees are aware of efforts by the Small Business Administration to coordinate the features and operations of the Export Working Capital Program with a similar export loan program operated by the Export-Import Bank. The conferees are supportive of the continuing joint efforts of the SBA and Export-Import Bank to encourage and facilitate small business participation in the export marketplace. In establishing the new guarantee rate under the Export Working Capital Program, this legislation should not be interpreted as expressing any intention or expectation that the guarantee rate for the Eximbank program be reduced to the same level. The conferees direct the SBA, in consultation with the Export-Import Bank, to issue a report no later than 120 days after the enactment of this act assessing the impact, if any, of the reduced guarantee rate on the Export Working Capital Program. The report should include a comparison of the SBA program with the working capital guarantee program operated by the Export-Import Bank, and shall include an analysis of the number and size of transactions concluded under the program, both prior to and after enactment of the new guarantee provisions.

Under the conference agreement, guarantee fees under the 7(a) program increase as the size of the loan increases. The conferees are aware of the concern expressed by the Small Business Administration that lenders and borrowers may seek to arrange a number of smaller, related loans in order to avoid the higher guarantee fee applicable to a single, larger loan. The conferees direct the Small Business Administration to implement the guarantee fee structure set forth in the conference agreement with any instructions, defini-

tions, rules, regulations, or guidelines as the SBA may deem necessary in order to prevent avoidance or evasion of these fees, including establishing a reasonable period of time during which related loans will be treated as constituting a single loan for purposes of calculating the guarantee fee.

The effect of the provisions included in the conference agreement will be to reduce the subsidy rate for the 7(a) loan program and increase the availability of guarantee authority under the program. The conferees direct the SBA, promptly upon enactment of the legislation included in the conference report, to remove the temporary administrative limitations previously implemented by the SBA to limit demand for 7(a) loan guarantees. Any such administrative program changes in the future will be subject to the provisions of Section 5 of the new legislation.

JAN MEYERS,
PETER G. TORKILDSEN,
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GLENN POSHARD,

Managers on the Part of the House.

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