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REPT. 108–325
Part 1

SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING REVITALIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON SMALL BUSINESS

[TO ACCOMPANY H.R. 2802]

OCTOBER 21, 2003.—Ordered to be printed

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Mr. MANZULLO, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 2802]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 2802) to reauthorize the Small Business Act and the Small Business Investment Act of 1958, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Reauthorization and Manufacturing Revitalization Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS INVESTMENT ACT OF 1958 AMENDMENTS AND RELATED PROVISIONS

Sec. 101. State defined.
Sec. 102. Small manufacturer defined.
Sec. 103. Maximum participating securities rate.
Sec. 104. Maximum leverage for buying operations.
Sec. 105. Maximum aggregate amount of leverage.
Sec. 106. Investments in smaller enterprises.
Sec. 107. Actions of Administrator with respect to capital impairment.
Sec. 108. Conditions for distribution.
Sec. 109. Modification of aggregate limitation.
Sec. 110. Notice and comment rulemaking.
Sec. 111. Low-income geographic area definition.
Sec. 112. Unmet equity investment needs of certain small manufacturers.
Sec. 113. Participation agreement requirement.
Sec. 114. Final approval requirement.
Sec. 115. Conditionally approved companies.
Sec. 116. Applications for new markets venture capital companies.
Sec. 117. Authorization of appropriations.
Sec. 118. Repeal of lease guarantee authority.
Sec. 119. Amendment of congressional findings relating to State development companies.
Sec. 120. Qualification of State development companies.
Sec. 121. Job requirements; definition.
Sec. 122. Small business concern loan limitations.
Sec. 123. Approval requirement.

Sec. 124. Effective date for termination of certain fees.
Sec. 125. Accredited lenders program.
Sec. 126. Premier certified lenders program.
Sec. 127. Foreclosure and liquidation of loans.
Sec. 128. Additions to title V.
Sec. 129. Regulations to carry out amendments to loan program.
Sec. 130. Conforming amendments.
Sec. 131. Development company affiliates.

TITLE II—SMALL BUSINESS ACT AMENDMENTS AND RELATED PROVISIONS.

Sec. 201. Short title.
Sec. 202. Findings; statements of policy.
Sec. 203. Definitions.
Sec. 204. Small Business Administration.
Sec. 205. Financial management.
Sec. 206. Organization and staff.
Sec. 207. Loan programs.
Sec. 208. Government contract and business development assistance for small business concerns, etc.
Sec. 209. Training and assistance.
Sec. 210. Contracting assistance; etc.
Sec. 211. Authorization of appropriations; etc.
Sec. 212. Small business development centers.
Sec. 213. Assignment of employees of the Office of International Trade.
Sec. 214. Supervisory and enforcement authority for small business lending companies.
Sec. 215. Reauthorization of Paul D. Coverdell drug-free workplace program.
Sec. 216. Women's business center program.
Sec. 217. HUBZone program.
Sec. 218. Other repeals and reorganizations.
Sec. 219. Rules of construction.

TITLE III—OTHER PROVISIONS

Sec. 301. Report regarding national database of small manufacturers.
Sec. 302. Workforce transformation plan.
Sec. 303. Repeal of certain provisions of the Disaster Relief Act of 1970.
Sec. 304. Regulations on size standards of franchisees.
Sec. 305. Temporary small business development center assistance to Indian tribe members, Native Alaskans, and Native Hawaiians.
Sec. 306. Temporary small business development center assistance for vocational and technical entrepreneurship development.
Sec. 307. Very small business concern contract data collection.
Sec. 308. Very small business concern pilot program for competition award to home-based business.
Sec. 309. Socially and economically disadvantaged business.
Sec. 310. Study and report on effectiveness of aggregate limitations on amount of assistance to any single enterprise.
Sec. 311. Study and report on coordination of new markets venture capital program with new markets tax credit program.
Sec. 312. Study and report on premier certified lenders program.
Sec. 313. Data collection capabilities.
Sec. 314. Resubmission of disaster loan applications for businesses affected by September 11, 2001, terrorist attacks.
Sec. 315. National small business incubator program.
Sec. 316. Report regarding effects of sale of disaster loans on borrowers.
Sec. 317. Suspension and extension of certain disaster loans related to the terrorist attacks of September 11, 2001.
Sec. 318. Definitions.

TITLE I—SMALL BUSINESS INVESTMENT ACT OF 1958 AMENDMENTS AND RELATED PROVISIONS

SEC. 101. STATE DEFINED.

Paragraph (4) of section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended to read as follows:

"(4) the term 'State' has the meaning given such term in section 3 of the Small Business Act;".

SEC. 102. SMALL MANUFACTURER DEFINED.

Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(1) in paragraph (16), by striking "and" after the semicolon at the end;

(2) in paragraph (17), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(18) the term "small manufacturer" has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).".

SEC. 103. MAXIMUM PARTICIPATING SECURITIES RATE.

Section 303(g)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(2)) is amended by striking "1.38 percent" and inserting "1.7 percent".

SEC. 104. MAXIMUM LEVERAGE FOR BUYING OPERATIONS.

Section 303(b)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(2)) is amended by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

"(A) IN GENERAL.—The outstanding leverage made available to a licensee under section 301(c) shall not exceed 300 percent of private capital, up to a maximum of $115,000,000, except that the maximum shall be $150,000,000 if the licensee certifies in writing that more than 50 percent of its aggregate dollar amount of financings are in small manufacturers.

"(B) COMMONLY CONTROLLED LICENSEES.—

"(i) In the case of 2 or more licensees that are commonly controlled (as determined by the Administrator), upon application to the Administrator, the outstanding leverage made available shall not exceed $150,000,000, except that the maximum shall be $185,000,000 if the licensees certify in writing that more than 50 percent of their aggregate dollar amount of financings are in small manufacturers. The Administrator shall have 10 business days to approve or disapprove an application under the preceding sentence. Approval or disapproval is final agency action for purposes of chapter 7 of title 5, United States Code.

"(ii) Not later than 120 days after the enactment of this subparagraph, the Administrator shall prescribe regulations providing standards and conditions for increases in leverage, including the standards for determining common control of licensees.

"(iii) Until regulations are prescribed under clause (ii), the Administrator shall approve the application of each commonly controlled licensee under the definition of common control in section 107.50 of title 13, Code of Federal Regulations, as in effect on January 1, 2003.".

SEC. 105. MAXIMUM AGGREGATE AMOUNT OF LEVERAGE.

Section 303(b) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)) is amended by striking paragraph (4).

SEC. 106. INVESTMENTS IN SMALLER ENTERPRISES.

Sections 303(d) of the Small Business Investment Act of 1958 (15 U.S.C. 683(d)) is amended to read as follows:

"(d) INVESTMENTS IN SMALLER ENTERPRISES.—As a condition of approval of an application for leverage, the Administrator shall require a licensee to certify in writing that not less than 25 percent of the licensee's aggregate dollar amount of financings will be provided to smaller enterprises.".

SEC. 107. ACTIONS OF ADMINISTRATOR WITH RESPECT TO CAPITAL IMPAIRMENT.

Section 303(e) of the Small Business Investment Act of 1958 (15 U.S.C. 683(e)) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting "; and"; and

(3) by adding at the end the following new paragraphs:

"(3) shall not, for reasons of capital impairment, restrict the operations of the licensee or direct the use of the licensee's capital to any purpose other than the purposes for which the license was granted; and

"(4) notwithstanding paragraph (3), may take action to restrict the operations of, or liquidate a licensee for failure to comply with any other provision of the law or regulation promulgated pursuant to this Act.".

SEC. 108. CONDITIONS FOR DISTRIBUTION.

Sections 303(g)(9) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(9)) is amended to read as follows:

"(9)(A) Subject to subparagraphs (B), (C), and (D), after making distributions under paragraph (8), a company with outstanding participating securities may distribute the balance of income to its investors, if there are no accumulated and unpaid prioritized payments.

"(B) Amounts received by the Administration under this paragraph and paragraph 8 shall be applied first as prepayment of the principal amount of the outstanding participating securities or debentures of the company at the time of such distribution and then to the allocation under paragraph (11).

"(C) 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 day before the distribution until the outstanding participating securities or debentures of the company are paid in full, after which any remaining distributions under this paragraph shall be made to private investors and to the Ad-

ministration in the ratio that is provided for the allocation of profits in paragraph (11).

"(D) The Administrator shall prescribe such regulations as are required to assure that management fees for the company are not unreasonably reduced due to a reduction in combined capital as a result of distributions made under this paragraph.".

SEC. 109. MODIFICATION OF AGGREGATE LIMITATION.

Section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) is amended by inserting "(and not including any obligations or securities issued under section 7(a) of the Small Business Act or title V of this Act)" after "under the provisions of this title".

SEC. 110. NOTICE AND COMMENT RULEMAKING.

Section 308(c) of the Small Business Investment Act of 1958 (15 U.S.C. 687) is amended by adding at the end the following: "Any rules or regulations issued under this Act, other than those relating to agency management or personnel, shall be issued pursuant to section 553(b) of title 5, United States Code.".

SEC. 111. LOW-INCOME GEOGRAPHIC AREA DEFINITION.

(a) IN GENERAL.—Section 351(3)(A)(ii)(I) of the Small Business Investment Act of 1958 (15 U.S.C. 689(3)(A)(ii)(I)) is amended by striking "50 percent" and all that follows through the end and inserting "the median family income in that tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income; or".

(b) APPLICATION OF AMENDED DEFINITION.—The definition of low-income geographic area in section 351(3) of the Small Business Investment Act of 1958 (15 U.S.C. 689(3)), as amended by subsection (a), shall apply to private capital raised under section 354(d)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 689c(d)(1)) before, on, or after the effective date of the amendment made by subsection (a).

SEC. 112. UNMET EQUITY INVESTMENT NEEDS OF CERTAIN SMALL MANUFACTURERS.

Section 352(2) of the Small Business Investment Act of 1958 (15 U.S.C. 689a(2)) is amended by inserting after "small enterprises" the following: "and small manufacturers".

SEC. 113. PARTICIPATION AGREEMENT REQUIREMENT.

Section 353(1) of the Small Business Investment Act of 1958 (15 U.S.C. 689b(1)) is amended by inserting after "section 352" the following: "(with at least one such agreement to be with a company engaged primarily in development of and investment in small manufacturers)".

SEC. 114. FINAL APPROVAL REQUIREMENT.

Section 354(d) of the Small Business Investment Act of 1958 (15 U.S.C. 689c(d)) is amended, in the matter before paragraph (1), by striking "a period of time, not to exceed 2 years," and inserting "2 years".

SEC. 115. CONDITIONALLY APPROVED COMPANIES.

Section 358(a) of the Small Business Investment Act of 1958 (15 U.S.C. 689(a)) is amended by adding at the end the following new paragraphs:

"(6) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—Upon the request of a company conditionally-approved under section 354(c), the Administrator shall provide up to $50,000 in grant assistance for establishment of an operational assistance program under this title.

"(7) REPAYMENT.—If a company receives a grant under paragraph (6) and does not enter into a participation agreement for final approval, the company shall repay the amount of the grant to the Administrator.

"(8) DEDUCTION.—If a company receives a grant under paragraph (6) and receives final approval under section 354(e), the Administrator shall deduct the amount of the grant under that paragraph from the total grant amount that the company receives for operational assistance.".

SEC. 116. APPLICATIONS FOR NEW MARKETS VENTURE CAPITAL COMPANIES.

Not later than 60 days after the date of the enactment of this section, the Administrator shall prescribe standard documents for final New Markets Venture Capital Company approval application under section 354(e) of the Small Business Investment Act of 1958 (15 U.S.C. 689c(e)). The Administrator shall assure that the standard documents shall be designed to substantially reduce the cost burden of the application process on the companies involved.

SEC. 117. AUTHORIZATION OF APPROPRIATIONS.

Section 368(a) of the Small Business Investment Act of 1958 (15 U.S.C. 689q(a)) is amended—

(1) in the matter before paragraph (1) by striking "fiscal years 2001 through 2006" and inserting "fiscal years 2004 and 2005";

(2) in paragraph (1), by striking "$150,000,000" and inserting "$75,000,000"; and

(3) in paragraph (2), by striking "$30,000,000" and inserting "$15,000,000".

SEC. 118. REPEAL OF LEASE GUARANTEE AUTHORITY.

(a) REPEAL.—Sections 401, 402, and 404 of the Small Business Investment Act of 1958 (15 U.S.C. 692, 693, and 694-1) are hereby repealed.

(b) APPLICATION TO OUTSTANDING GUARANTEES.—The repeals made by subsection (a) shall not affect the rights, powers, duties, or obligations of the Administrator or any other person with respect to any guarantee made under section 401 or 404 of the Small Business Investment Act of 1958 on or before the date of the enactment of this Act.

SEC. 119. AMENDMENT OF CONGRESSIONAL FINDINGS RELATING TO STATE DEVELOPMENT COMPANIES.

Section 501(a) of the Small Business Investment Act of 1958 (15 U.S.C. 695(a)) is amended by striking "purpose" and all that follows through "areas" and inserting the following: "purposes of this title are to foster economic development and create or preserve job opportunities in both urban and rural areas, and to enhance the ability of America's small manufacturers to expand".

SEC. 120. QUALIFICATION OF STATE DEVELOPMENT COMPANIES.

Section 501(d) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)) is amended—

(1) in paragraph (2), by inserting after "area," the following: "increasing the productive capacity of small manufacturers,";

(2) in paragraph (3) by striking subparagraph (D) and inserting the following:

"(D) development in a community with a population of less than 50,000 that is not located within a standard metropolitan statistical area,"; and

(3) by striking the sentence beginning "If eligibility" after subparagraph (H) of paragraph (3).

SEC. 121. JOB REQUIREMENTS; DEFINITION.

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following new subsection:

"(e)(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every $50,000 guaranteed by the Administration, except that the amount is $100,000 in the case of a project of a small manufacturer.

"(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every $50,000 guaranteed by the Administration.

"(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than $75,000 per job created or retained.

"(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

"(5) Under regulations prescribed by the Administrator, the Administrator may waive any requirement of this subsection (other than paragraph (4)).".

SEC. 122. SMALL BUSINESS CONCERN LOAN LIMITATIONS.

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended—

(1) by striking "$1,000,000" and inserting "$2,000,000";

(2) by striking "$1,300,000" and inserting "$2,500,000"; and

(3) by inserting after "small business concern" the last place it appears the following: "and loans to small manufacturers shall be limited to $4,000,000 and loans under this section shall not be limited by reason of any loan guaranteed by the Administration under section 7(a) of the Small Business Act (15 U.S.C. 636(a))".

SEC. 123. APPROVAL REQUIREMENT.

Section 503(b) of the Small Business Investment Act of 1958 (15 U.S.C. 697(b)) is amended by striking paragraph (6) and inserting the following:

"(6) except as provided in section 508, the Administration approves each loan to be made from such proceeds in accordance with section 512, (but such approval shall not require a small business investment company licensed under title III of this Act to guarantee a loan without regard to its ownership percentage of the borrower); and".

SEC. 124. EFFECTIVE DATE FOR TERMINATION OF CERTAIN FEES.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended by striking "2003" and inserting "2005".

SEC. 125. ACCREDITED LENDERS PROGRAM.

Section 507 of the Small Business Investment Act of 1958 (15 U.S.C. 697d) is amended—

(1) in subsection (b)(1), by inserting "and" after the semicolon at the end;

(2) in subsection (b), by striking paragraphs (2) through (6) and inserting the following:

"(2) has a loan default rate, as determined by the Bureau of Premier Certified Lenders Program Oversight, that is—

"(A) less than the national average;

"(B) one percent higher than the national average, if at least 20 percent of the development company's portfolio is for projects in areas referred to in section 501(e)(3); or

"(C) two percent higher than the national average, if at least 30 percent of the development company's portfolio is for projects of small manufacturers.";

(3) by striking subsection (c); and

(4) in subsection (d)(1), by striking "that—" and all that follows through the end and inserting: "that the development company has not continued to meet the requirements of subsection (b).".

SEC. 126. PREMIER CERTIFIED LENDERS PROGRAM.

Section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e) is amended to read as follows:

"SEC. 508. PREMIER CERTIFIED LENDERS PROGRAM.

"(a) ESTABLISHMENT.—The Administrator may establish a Premier Certified Lenders Program for qualified State and local 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 qualified State and local development company shall prepare and submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

"(2) DESIGNATION.—The Administrator may designate a qualified State and local development company as a premier certified lender—

"(A) if the company is an active qualified State and local 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 Administrator 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 Administrator 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 Administrator under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company); and

"(D) the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

"(3) APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Administrator may revoke the designation of a qualified State and local development company as a premier certified lender under this section at any time, if the Administrator

determines that the qualified State and local development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

"(c) 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).

"(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 Administrator;

"(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administrator; 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 Administrator 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 Administrator shall allow the qualified State and local development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

"(7) ALTERNATIVE LOSS RESERVE.—

"(A) ELECTION.—With respect to any eligible calendar quarter, a qualified high loss reserve premier certified lender may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for that quarter.

"(B) CONTRIBUTIONS.—

"(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve premier certified lender that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during that quarter.

"(ii) BASED ON LOSS.—A qualified high loss reserve premier certified lender that makes the election described in subparagraph (A) with respect to a calendar quarter shall, before the last day of that quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the lender—

"(I) is not less than $100,000; and

"(II) is sufficient, as determined by a qualified independent auditor, for the lender to meet its obligations to protect the Government from risk of loss.

"(iii) CERTIFICATION.—Before the end of a calendar quarter for which an election is in effect under subparagraph (A), the head of the premier certified lender shall submit to the Administrator a certification that the loss reserve of the lender is sufficient to meet the lender's obligation to protect the Government from risk of loss. The certification shall be submitted in such form and manner as the Administrator may require and shall be signed by the head of the lender and by the auditor making the determination under clause (ii)(II).

"(C) DISBURSEMENTS.—

"(i) ORDINARY RULE INAPPLICABLE.—Paragraph (6) shall not apply with respect to any qualified high loss reserve premier certified lender for any calendar quarter for which an election is in effect under subparagraph (A).

"(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administrator shall allow the qualified high loss reserve premier certified lender to withdraw from its loss reserve the excess of—

"(I) the amount of the loss reserve, over

"(II) the greater of $100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the lender's obligation to protect the Government from risk of loss.

"(D) RECONTRIBUTION.—If the requirements of this paragraph apply to a qualified high loss reserve premier certified lender for a calendar quarter and cease to apply to that lender for any subsequent calendar quarter, the lender shall make a contribution to its loss reserve in such amount as the Administrator may require, except that the amount shall not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in the loss reserve had this paragraph never applied to the lender. The Administrator may require that the contribution be made as a single payment or as a series of payments.

"(E) RISK MANAGEMENT.—If a qualified high loss reserve premier certified lender fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and the failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to the lender as of the end of the 180-day period and the lender shall make the contribution described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

"(F) QUALIFIED HIGH LOSS RESERVE PREMIER CERTIFIED LENDER.—The term 'qualified high loss reserve premier certified lender' means, with respect to a calendar year, a premier certified lender so designated by the Administrator for that year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

"(i) the amount of the loss reserve of the company is not less than $100,000;

"(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of Premier Certified Lenders Program loans and for grading each Premier Certified Lenders Program loan made by the company on the basis of the risk of loss associated with such loan; and

"(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administrator has issued a waiver with respect to the requirement of this clause.

"(G) SPECIFIED RISK MANAGEMENT BENCHMARKS.—For purposes of this paragraph, the term 'specified risk management benchmarks' means the following rates, as determined by the Administrator:

"(i) Currency rate.

"(ii) Delinquency rate.

"(iii) Default rate.

"(iv) Liquidation rate.

"(v) Loss rate.

"(H) QUALIFIED INDEPENDENT AUDITOR.—For purpose of this paragraph, the term 'qualified independent auditor' means an auditor who—

"(i) is compensated by the qualified high loss reserve premier certified lender;

"(ii) is independent of the lender; and

"(iii) has been approved by the Administrator during the preceding year.

"(I) PREMIER CERTIFIED LENDERS PROGRAM LOAN.—For purposes of this paragraph, the term 'Premier Certified Lenders Program loan' means a loan guaranteed under this section.

"(J) ELIGIBLE CALENDAR QUARTER.—For purposes of this paragraph, the term 'eligible calendar quarter' means—

"(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph; and

"(ii) the 7 succeeding calendar quarters.

"(K) REGULATIONS.—Not later than 60 days after the date of the enactment of this paragraph, the Administrator shall publish in the Federal Reg-

ister and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

"(i) the approval of auditors under subparagraph (H); and

"(ii) the designation of qualified high loss reserve premier certified lenders under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

"(8) BUREAU OF PREMIER CERTIFIED LENDERS PROGRAM OVERSIGHT.—

"(A) ESTABLISHMENT.—There is hereby established in the Administration a bureau to be known as the Bureau of Premier Certified Lenders Program Oversight, within the Office of Lender Oversight established pursuant to section 6 of the Small Business Act.

"(B) PURPOSE.—The Bureau shall carry out such functions under this subsection as the Administrator may designate. The functions of the Bureau under the preceding sentence may not be delegated to a district director or any other employee assigned to a district office or regional office established by the Administrator under section 4 of the Small Business Act (15 U.S.C. 633).

"(C) DEADLINE.—Not later than 90 days after the date of the enactment of this paragraph—

"(i) the Administrator shall ensure that the Bureau is prepared to carry out the functions designated under subparagraph (B), and

"(ii) the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau to carry out such functions.

"(D) If the Administrator does not comply with subparagraph (C)(i), the certifications required under this section shall be deemed approved until the date of compliance. Certifications so deemed approved shall continue in effect notwithstanding any later compliance with that subparagraph.

"(d) SALE OF CERTAIN DEFAULTED LOANS.—

"(1) NOTICE.—If, upon default in repayment, the Administrator acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any qualified State and local development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administrator first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

"(2) LIMITATIONS.—The Administrator shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

"(A) provides prospective purchasers with the opportunity to examine the Administrator's records with respect to such loan; and

"(B) provides the notice required by paragraph (1).

"(e) LOAN APPROVAL AUTHORITY.—

"(1) IN GENERAL.—Notwithstanding section 503(b)(6), and subject to such terms and conditions as the Administrator may establish, the Administrator may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administrator may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate 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 Administrator 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.

"(f) REVIEW.—After the issuance and sale of debentures under this section, the Administrator, at intervals not 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 Administrator shall consider the findings of the review in carrying out its responsibilities under subsection (g), but such review shall not affect any outstanding debenture guarantee.

"(g) SUSPENSION OR REVOCATION.—The designation of a qualified State and local development company as a premier certified lender may be suspended or revoked if the Administrator determines that the company—

"(1) has not continued to meet the criteria for eligibility under subsection (b);

"(2) has not established or maintained the loss reserve required under subsection (c);

"(3) is failing to adhere to the Administrator's rules and regulations; or

"(4) is violating any other applicable provision of law.

"(h) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

"(i) PROGRAM GOALS.—Each qualified State and local development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 504 pursuant to the program authorized under this section.

"(j) REPORT.—The Administrator shall annually report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the implementation of this section. Each report shall include—

"(1) the number of qualified State and local 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 Administrator deems appropriate.".

(b) EFFECTIVE DATE.—Section 508(c)(6) of the Small Business Investment Act of 1958 (as amended by subsection (a)) shall apply to withdrawals after the end the 90-day period beginning on the date of the enactment of this Act.

SEC. 127. FORECLOSURE AND LIQUIDATION OF LOANS.

Section 510 of the Small Business Investment Act of 1958 (15 U.S.C. 697g) is amended—

(1) in subsection (a), by striking "that meets the eligibility requirements of subsection (b)(1)"; and

(2) by striking subsection (b) and all that follows through the end of such section and inserting the following new subsections:

"(b) ELECTION BY QUALIFIED STATE OR LOCAL DEVELOPMENT COMPANY.—

"(1) A qualified State or local development company shall be eligible for the delegation of authority under subsection (a) if such company elects to accept such delegation during the 90-day period beginning on the date of the enactment of this subsection.

"(2) One year after the date of the initial election, and annually thereafter by a date specified by the Administrator, a qualified State or local development company may make a new election to accept the delegation under subsection (a).

"(3) An election under this subsection shall apply to all loans in the portfolio involved. An election made in a subsequent year does not terminate any foreclosure or liquidation under a previous election.

"(c) SCOPE OF DELEGATED AUTHORITY.—

"(1) Each qualified State or local development company that makes an election under subsection (b) shall perform all functions related to liquidation and foreclosure without obtaining prior approval of the Administrator.

"(2) Not later than 5 calendar days after exercising delegated authority with respect to a specific loan, the qualified State or local development company shall report to the Administrator the actions that the company proposes to take with respect to the loan.

"(3) The Administrator may prohibit an action proposed under paragraph (2) by so notifying the company in writing. The notification shall state the reasons for the prohibition, including a detailed explanation of how the proposed actions—

"(A) will have a serious adverse effect on management of the Administration's activities under this title; or

"(B) will affect the legal rights of the Administration or other agencies or instrumentalities of the United States.

"(4) A prohibition under paragraph (3) shall apply only to the loan involved and shall not affect any other delegation.

"(d) PURCHASE OF INDEBTEDNESS.—A qualified State or local development company may not commit the Administration to the purchase of additional indebtedness secured by property that is the subject of a defaulted loan without the written approval of the Administrator. The Administrator shall have 7 calendar days in which to act on a request for approval for such an additional purchase. Action by the Ad-

ministrator under this subsection shall have no other effect on the delegation of authority exercised by the qualified State or local development company.

"(e) FORECLOSURE AND LIQUIDATION BY ADMINISTRATOR.—

"(1) The Administrator shall issue contracts to foreclose or liquidate loans made during any year for which a qualified State or local development company did not make an election under subsection (b).

"(2) In awarding contracts under this subsection, the Administrator shall not consolidate contract requirements that relate to more than one qualified State or local development company unless the Administrator determines that such consolidation will achieve—

"(A) a reduction in cost of not less than 10 percent; or

"(B) an increase in the recovered amount of not less than 10 percent.

"(3) In awarding contracts under this section, the Administrator shall consider the experience and expertise of the offeror regarding the conduct of similar foreclosure and liquidation of indebtedness, the bankruptcy laws of the United States, valuation of property, and successful litigation.

"(4) Reimbursement to contractors under this subsection shall be based on recovery of their costs (including salaries, expenses, and overhead) and a contingent fee, with respect to each loan which is subject to the contract, as follows:

"(A) In the case of recovery of at least 50 percent of outstanding amount of such loan, a contingent fee equal to 5 percent of the recovery.

"(B) In the case of recovery of at least 75 percent of such amount, a contingent fee equal to 10 percent of the recovery.".

SEC. 128. ADDITIONS TO TITLE V.

Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is amended by adding at the end the following new sections:

"SEC. 511. SHORT FORM APPLICATION.

"(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this section, the Administrator shall prescribe—

"(1) a low documentation loan application form for use in making loans under section 502 for guarantees of not more than $500,000; and

"(2) for all other loans made under section 502, a short form application form that reduces the amount of information needed to process the loan by 30 percent from the size of the loan application in effect on January 1, 2003.

"(b) USE OF DEVELOPMENT COMPANY FORMS.—If the Administrator does not comply with paragraph (1) or (2) of subsection (a), a qualified State or local development company may use its own forms until the Administrator prescribes the form involved.

"SEC. 512. CENTRALIZED DEVELOPMENT COMPANY LOAN PROCESSING.

"(a) ESTABLISHMENT.—

"(1) Not later than 180 days after the date of the enactment of this section, the Administrator shall, using already appropriated funds and fees paid by qualified State and local development companies, establish two centers for approving loans under section 502, except as otherwise provided in section 508.

"(2) The loan centers may not be located in the same Federal Region. One center shall be located in Region 1, 2, 3, 4, or 5, and one center shall be located in Region 6, 7, 8, 9, or 10.

"(3) The Administrator is authorized to locate the centers with its existing LowDoc Loan Application Centers in Hazard, KY and Sacramento, CA, but employees who review applications for loans under section 502 shall not review applications for loan guarantees under section 7 of the Small Business Act (15 U.S.C. 636).

"(4) If the Administrator does not establish the centers required by paragraph (1), the qualified State and local development companies shall have the authority to approve or deny applications without the consent of the Administrator.

"(b) TIMING.—

"(1)(A) From the date on which a loan application is received at a center established under subsection (a), the Administration shall have 5 business days to approve or deny the application.

"(B) Not later than one business day after the date on which an application is received, the Administration shall notify the applicant and the qualified State or local development company in writing that the application was received and was either complete or incomplete. The notification shall specify the date and time at which the application was received. If the application is incomplete, the notification shall specify the material needed to make the application complete.

"(C) The Administration may return an application for incompleteness not more than 3 times after which the applicant may use forms developed by the qualified State or local development company.

"(2) An accredited lender designated under section 507 shall have the authority to approve or deny a loan application if the Administration does not act within 5 business days from the date a complete application is received by the center. Notwithstanding any other law, a qualified State or local development company that is not designated as an accredited or premier certified lender shall have the authority to approve or deny a loan if the Administration does not make a decision within 20 business days.

"(c) APPEAL OF DENIAL.—

"(1) An applicant shall have the right to appeal a denial to the Regional Administrator for the region in which the qualified State or local development company is headquartered. Not later than 3 business days after receipt, the Regional Administrator shall either concur with the denial or approve the loan.

"(2) If the Regional Administrator denies the loan, the applicant shall have the right of appeal to the Deputy Administrator. Not later than 3 business days after receipt, the Deputy Administrator shall either concur with the denial by the Regional Administrator or approve the loan.

"(3) The decision of the Deputy Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

"SEC. 513. REPORTS.

"The Administrator shall report on the performance of the loans made under this title on a semi-annual basis to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate. Such report shall include the currency and default rates.".

SEC. 129. REGULATIONS TO CARRY OUT AMENDMENTS TO LOAN PROGRAM.

(a) ISSUANCE.—Except as otherwise provided in title I, the Administrator shall, not later than 90 days after the date of the enactment of this Act, prescribe such regulations as are necessary to carry out the provisions of this Act that relate to title V of the Small Business Investment Act of 1958 and shall provide a minimum of 30 days notice and comment with respect to such regulations.

(b) TEMPORARY PROHIBITION ON OTHER RULEMAKING.—During the period beginning on the date of the enactment of this Act and ending on the date that is 1 year after the date on which the centralized loan processing centers described in section 512 of the Small Business Investment Act of 1958 begin operations, the Administration shall not begin or conclude any rulemaking to modify the program established by title V of such Act unless such rulemaking is necessary to carry out the provisions of this Act described in subsection (a).

SEC. 130. CONFORMING AMENDMENTS.

Section 503(c)(1) and section 503(e)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(c)(1) and 697(e)(2)) are each amended by striking "certified" and inserting "qualified State or local".

SEC. 131. DEVELOPMENT COMPANY AFFILIATES.

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695(e)), as amended by section 121, is further amended by adding at the end the following new subsection:

"(f) DEVELOPMENT COMPANY AFFILIATES.—

"(1) IN GENERAL.—The Administrator shall permit a qualified State development company under this section and section and 502 to affiliate with a lender authorized to make loans under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) if—

"(A) the affiliate is a qualified State development company under this section or section 502;

"(B) the affiliate is chartered by a special Act of the State legislature for purposes of economic development and job creation through investment of public and private capital, without regard to any return on the expected capital; or

"(C) the affiliate is a business development company chartered by the State with the primary purpose of economic development through small business financing programs.

"(2) SPECIAL RULE.—An affiliate that meets a criterion under subparagraph (A), (B), or (C) of paragraph (1) is not required to have a full-time manager if the qualified State development company has management in common with the affiliate.".

TITLE II—SMALL BUSINESS ACT AMENDMENTS AND RELATED PROVISIONS.

SEC. 201. SHORT TITLE.

This title may be cited as the "Small Business Amendments Act of 2003".

SEC. 202. FINDINGS; STATEMENTS OF POLICY.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended to read as follows:

"SEC. 2. FINDINGS; STATEMENTS OF POLICY.

"(a) AID, COUNSEL, ASSISTANCE, ETC., TO SMALL BUSINESS CONCERNS.—The essence of the American economic system of private enterprise is free competition. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business, including small manufacturers, is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns, including small manufacturers, in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for manufactured goods, and property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business concerns, to insure that a fair proportion of the total sales of Government property be made to such concerns, and to maintain and strengthen the overall economy of the Nation.

"(b) ASSISTANCE TO COMPETE IN INTERNATIONAL MARKETS.—

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

"(A) enhancing their ability to export;

"(B) facilitating technology transfers;

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

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

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

"(F) ensuring that the interests of small business concerns are adequately represented in bilateral and multilateral trade negotiations; and

"(G) improving the economic health of small manufacturers through reduction in unnecessary regulation and improvements in the procurement process that will enhance the ability of small manufacturers to compete against foreign manufacturers.

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

"(c) AID FOR AGRICULTURALLY RELATED INDUSTRIES; FINANCIAL ASSISTANCE.—It is the declared policy of the Congress that the Government, through the Small Business Administration, should provide aid and assistance, including the financial assistance authorized by this Act, to small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

"(d) USE OF ASSISTANCE PROGRAMS TO ESTABLISH, PRESERVE, AND STRENGTHEN SMALL BUSINESS CONCERNS.—

"(1) The assistance programs authorized by sections 7(i), 8(a), and 8(b) should be utilized to assist in the establishment, preservation, and strengthening of small business concerns and the improvement of the managerial skills employed in such concerns, with special attention to small business concerns—

"(A) located in urban or rural areas with high proportions of unemployed or low-income individuals; and

"(B) owned by low-income individuals.

"(2) With respect to the programs authorized by section 8(a), the Congress finds—

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

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

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

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

"(E) that the power to let Federal contracts pursuant to section 8(a) can be an effective procurement assistance tool for development of business ownership, including ownership of small manufacturers, among groups that own and control little productive capital; and

"(F) that the procurement authority under section 8(a) shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

"(3) It is therefore the purpose of the programs authorized by section 8(a) to—

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

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

"(e) PARTICIPATION IN FREE ENTERPRISE SYSTEM BY SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS.—

"(1) With respect to the business development programs carried out by the Administrator, the Congress finds—

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

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

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

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

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

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

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

"(2) It is therefore the purpose of section 8(a) to—

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

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

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

"(f) ASSISTANCE TO DISASTER VICTIMS UNDER DISASTER LOAN PROGRAM.—In administering the disaster loan program authorized by section 7, the Administrator should—

"(1) provide assistance and counseling to disaster victims in filing applications;

"(2) provide information relevant to loan processing and loan closing;

"(3) promptly disburse loan proceeds; and

"(4) give the disaster program a high priority in allocating funds for administrative expenses.

"(g) ASSISTANCE TO WOMEN OWNED BUSINESS.—

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

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

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

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

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

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

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

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

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

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

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

"(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

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

"(h) CONTRACT BUNDLING.—It is the declared policy of the Congress that each Federal agency should—

"(1) comply with congressional intent to foster the participation of small business concerns, in the following order, as prime contractors, subcontractors, and suppliers;

"(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

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

"(i) SMALL MANUFACTURERS.—

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

"(A) the manufacturing sector is a critical element of the Nation's economic security because it provides high-paying jobs that support other sectors of the economy dominated by small business;

"(B) America's small manufacturers face substantial competition from large manufacturers that source components and equipment from business

concerns located in other countries with lower wage rates, fewer regulatory restrictions, and beneficial currency policies;

"(C) it is in the national interest to expeditiously grow America's small manufacturers; and

"(D) such growth can be achieved through better access to capital, improved technical assistance, and increased procurement of manufactured goods by the United States, America's universities, and large businesses that would otherwise source goods overseas.

"(2) It is therefore, the purpose of those programs and activities conducted under the authority of this Act that assist small manufacturers to—

"(A) vigorously promote the legitimate interests of small manufacturers;

"(B) remove, insofar as possible, barriers that are encountered by small manufacturers in accessing capital, obtaining necessary technical assistance, and selling goods to the United States, America's universities, and large businesses that would otherwise source goods overseas;

"(C) require the Administrator to engage in a systematic and sustained effort to identify, define, and analyze the barriers to growth facing America's small manufacturers, recommend changes in policy that will reduce those barriers, and promote the involvement of America's small manufacturers in the partnership of the public and private sectors.".

SEC. 203. DEFINITIONS.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended to read as follows:

"SEC. 3. DEFINITIONS.

"(a) SMALL BUSINESS CONCERNS.—

"(1) IN GENERAL.—For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

"(2) ESTABLISHMENT OF SIZE STANDARDS.—

"(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

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

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

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

"(ii) provides for determining—

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

"(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

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

"(IV) other appropriate factors; and

"(iii) is approved by the Administrator.

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

"(3) AGRICULTURAL ENTERPRISES.—Notwithstanding paragraphs (1) and (2), an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $750,000.

"(4) RECERTIFICATIONS.—

"(A) TIMING RESTRICTION.—For purposes of determining if a business concern that has been awarded a contracting opportunity as a small business concern is still a small business concern, the Administrator shall not require such concern to be recertified as a small business concern more fre-

quently than each 5 years, unless there has been a change in ownership, control, or affiliation, in which case the small business concern shall recertify its status at that time.

"(B) GROWTH THRESHOLD.—In the case of any recertification described in subparagraph (A) of a business concern, such concern shall not fail to be treated as a small business concern for purposes of contracting opportunities awarded before the date of such recertification solely because such concern exceeds—

"(i) the annual receipts standard applicable to such concern by 20 percent or less of such standard; or

"(ii) the number of employees standard applicable to such concern by 5 percent or less of such standard.

"(b) AGENCY.—For purposes of this Act, any reference to an agency or department of the United States, and the term 'Federal agency', shall have the meaning given the term 'agency' by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

"(c) QUALIFIED EMPLOYEE TRUSTS.—For purposes of this Act:

"(1) The term 'qualified employee trust' means, with respect to a small business concern, a trust—

"(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986)—

"(i) which is maintained by such concern; and

"(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of such Code) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

"(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

"(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern;

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

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

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

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

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

"(B) such concern maintains a plan—

"(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1986);

"(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted;

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

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

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

"(d) DEFINITIONS RELATING TO INDIAN TRIBES.—For purposes of this Act:

"(1) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

"(2) QUALIFIED INDIAN TRIBE.—The term 'qualified Indian tribe' means any Indian tribe that owns and controls 100 percent of a small business concern, except as otherwise provided in section 8.

"(e) STATE; UNITED STATES.—For purposes of this Act, the terms 'State' and 'United States' include each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(f) CONTRACTING OFFICER.—For purposes of this Act, the term 'contracting officer' has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

"(g) SMALL BUSINESS DEVELOPMENT CENTER.—For purposes of this Act, the term 'small business development center' means any office that provides any portion of the services described in section 21 under such section.

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

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

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

"(k) DISASTER.—For purposes of this Act, the term 'disaster' means a sudden event which causes severe damage including floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, riots, civil disorders, acts of terrorism, or other catastrophes.

"(l) AGRICULTURAL ENTERPRISES.—For purposes of this Act, the term 'agricultural enterprises' means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

"(m) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of this Act, the term 'simplified acquisition threshold' has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

"(n) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—For purposes of this Act, the term 'small business concern owned and controlled by women' means any small business concern if—

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

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

"(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—For purposes of this Act:

"(1) BUNDLED CONTRACT.—The term 'bundled contract' means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements without regard to its designation by the procuring agency or whether a study of the effects of the solicitation on civilian or military personnel has been made.

"(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term 'bundling of contract requirements' means the use of any bundling methodology to satisfy 2 or more requirements for goods or services, including construction services, that have previously been provided to, or performed for, the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract or order for which the offers are solicited that is likely to be unsuitable for award to a small business concern due to—

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

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

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

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

"(3) BUNDLING METHODOLOGY.—The term 'bundling methodology' means—

"(A) a solicitation to obtain offers for a single contract or a multiple award contract;

"(B) a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract; or

"(C) the creation of any new procurement requirement that permits a consolidation of contract requirements.

"(4) SEPARATE SMALLER CONTRACT.—The term 'separate smaller contract', with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

"(p) DEFINITIONS RELATING TO HUBZONES.—For purposes of this Act:

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

"(A) qualified census tracts;

"(B) qualified nonmetropolitan counties;

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

"(D) redesignated areas.

"(2) HUBZONE.—The term 'HUBZone' means a historically underutilized business zone.

"(3) HUBZONE SMALL BUSINESS CONCERN.—The term 'HUBZone small business concern' means—

"(A) a small business concern that is owned and controlled by one or more persons, each of whom is a United States citizen;

"(B) a small business concern that is—

"(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

"(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2)));

"(C) a small business concern—

"(i) that is wholly owned by one or more Indian tribal organizations, or by a corporation that is wholly owned by one or more Indian tribal organizations; or

"(ii) that is owned in part by one or more Indian tribal organizations, or by a corporation that is wholly owned by one or more Indian tribal organizations, if all other owners are either United States citizens or small business concerns; or

"(D) a small business concern that is—

"(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

"(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns.

"(4) QUALIFIED AREAS.—

"(A) QUALIFIED CENSUS TRACT.—The term 'qualified census tract' has the meaning given that term in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

"(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term 'qualified nonmetropolitan county' means any county—

"(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of such Code; and

"(ii) in which—

"(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

"(II) the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the

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

"(C) REDESIGNATED AREA.—The term 'redesignated area' means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a 'redesignated area' only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified.

"(5) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

"(A) IN GENERAL.—The term 'qualified HUBZone small business concern' means any small business concern if the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by regulation) that—

"(i) it is a HUBZone small business concern—

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

"(II) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by one or more of the Indian tribal organization owners, or reside within any HUBZone adjoining any such Indian reservation;

"(ii) the small business concern will attempt to maintain the applicable employment percentage under clause (i) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

"(iii) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that—

"(I) in the case of a contract for services (except construction), not less than 50 percent of the cost of contract performance incurred for personnel will be expended for its employees or for employees of other HUBZone small business concerns;

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

"(III) it is a small business concern, the majority of which is owned and controlled by one or more individuals determined by the Administrator to be economically disadvantaged; and

"(IV) it has received a site visit from a district counsel to verify its eligibility before first responding to a solicitation from a Federal agency for goods or services under section 31 and again before first responding to a solicitation from a Federal agency for goods or services under section 31 after any change in the primary location of the concern.

"(B) SITE VISITS BY DISTRICT COUNSEL.—A district counsel, not later than 5 days after conducting any site visit described in subparagraph (A)(iii)(IV), shall make a written certification to the district director and general counsel regarding the status of the concern as a qualified HUBZone small business concern.

"(C) PROVISION OF FALSE INFORMATION.—Such term shall not include any small business concern if any certification made or information provided by such concern under subparagraph (A) has been, in accordance with the procedures established under section 31(c)(1)—

"(i) successfully challenged by an interested party; or

"(ii) otherwise determined by the Administrator to be materially false.

"(D) PERCENTAGE ADJUSTMENTS.—The Administrator may utilize a percentage other than the percentage specified in subclause (I) or (II) of subparagraph (A)(iii), if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that in-

dustry category, but under no circumstance shall such adjustment reduce the percentage below 33 percent.

"(E) CONSTRUCTION AND OTHER CONTRACTS.—The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in subclauses (I) and (II) of subparagraph (A)(iii) on contracts for general and specialty construction, and on contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (D).

"(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

"(A) ALASKA NATIVE CORPORATION.—The term 'Alaska Native Corporation' has the same meaning as the term 'Native Corporation' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(B) ALASKA NATIVE VILLAGE.—The term 'Alaska Native Village' has the same meaning as the term 'Native village' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(C) INDIAN RESERVATION.—The term 'Indian reservation'—

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

"(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior; and

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

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

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

"(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on December 21, 2000).

"(D) INDIAN TRIBAL ORGANIZATION.—The term 'Indian tribal organization' has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4506(l)).

"(q) DEFINITIONS RELATING TO VETERANS.—For purposes of this Act:

"(1) SERVICE-DISABLED VETERAN.—The term 'service-disabled veteran' means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

"(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term 'small business concern owned and controlled by service-disabled veterans' means a small business concern—

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

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

"(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term 'small business concern owned and controlled by veterans' means a small business concern—

"(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

"(B) the management and daily business operations of which are controlled by one or more veterans.

"(4) VETERAN.—The term 'veteran' has the meaning given the term in section 101(2) of title 38, United States Code.

"(r) SMALL MANUFACTURER.—For purposes of this Act, the term 'small manufacturer' means any small business concern if—

"(1) the primary business of the concern is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

"(2) all of its facilities that are used for production are located in the United States.

"(s) SMALL BUSINESS LENDING COMPANY.—For purposes of this Act, the term 'small business lending company' means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

"(t) NON-FEDERALLY REGULATED SBA LENDERS.—For purposes of this Act, the term 'Non-Federally regulated SBA lenders' means a business concern if—

"(1) such concern is authorized by the Administrator to make loans under section 7;

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

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

"(u) PROCUREMENT CENTER REPRESENTATIVE.—For purposes of this Act, the term 'procurement center representative' means an employee of the Administration whose sole responsibility is to perform the functions referred to in section 15(l).

"(v) COMMERCIAL MARKETING REPRESENTATIVE.—For purposes of this Act, the term 'commercial marketing representative' means an employee of the Administration whose sole responsibility is to perform the functions referred to in section 8(d).

"(w) TEAM.—For purposes of this Act, the term 'team' means two or more small business concerns who respond together to a solicitation, as one entity, for the purposes of providing goods or services to a Federal agency. A team shall be considered a small business concern provided that each member of the team is a small business concern.".

SEC. 204. SMALL BUSINESS ADMINISTRATION.

(a) IN GENERAL.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended to read as follows:

"SEC. 4. SMALL BUSINESS ADMINISTRATION.

"(a) ESTABLISHMENT.—In order to carry out the policies of this Act and the Small Business Investment Act of 1958, there is an agency known as the 'Small Business Administration' (also referred to in this Act as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia.

"(b) APPOINTMENT OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR.—

"(1) ADMINISTRATOR.—The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with the needs and problems of small business concerns. The Administrator shall not engage in any other business, vocation, or employment other than that of serving as Administrator.

"(2) DEPUTY ADMINISTRATOR.—The President shall appoint, by and with the advice and consent of the Senate, a Deputy Administrator, whose principal function shall be to assist the Administrator in the daily management of the Administration.

"(c) POWERS OF THE ADMINISTRATOR.—

"(1) USE OF SEAL.—The Administrator may adopt, alter, and use a seal, which shall be judicially noticed.

"(2) SUE AND BE SUED.—The Administrator may sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property.

"(3) RULES AND REGULATIONS.—The Administrator may make such rules and regulations as he deems necessary to carry out this Act and the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.). Any such rules or regulations, other than those relating to agency management or personnel, shall be issued pursuant to section 553(b) of title 5, United States Code.

"(4) FACILITIES AND STAFF OF FEDERAL AGENCIES.—Upon request of the Administrator, the head of any Federal department or agency may provide, on a reimbursable or nonreimbursable basis, information, services, facilities (including any field service thereof), or any of the personnel of that department or agency to the Administrator to assist in carrying out this Act and the Small Business Investment Act of 1958.

"(5) INVESTIGATIONS; SUBPOENAS.—

"(A) INVESTIGATIONS.—The Administrator may make such investigations as the Administrator deems necessary to determine whether a recipient of or participant in any assistance under this Act or any other person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act.

"(B) STATEMENTS.—The Administrator shall permit any person to file with it a statement in writing, under oath or otherwise as the Administrator shall determine, as to all the facts and circumstances concerning the matter to be investigated.

"(C) SUBPOENAS.—For the purpose of any investigation, the Administrator may administer oaths and affirmations, subpoena 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.

"(D) CONTEMPT PROCEEDINGS.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administrator 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 Administrator, 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.

"(6) GIFTS.—

"(A) IN GENERAL.—The Administrator may solicit, accept, hold, administer, and utilize gifts, devises, bequests, cash, and temporary use of property, both real and personal, and donations of personal services for the purpose of aiding or facilitating the Administrator in providing training to persons, employees, small business concerns and small manufacturers, and technical assistance to small business concerns and small manufacturers.

"(B) AUDITS.—Any such gifts, devises, or bequests of property shall be held in a separate account and shall be subject to quarterly audits by the Inspector General of the Administration who shall report quarterly to the Congress on the Administrator's use of such gifts, bequests, devises, and donations of personal services including an assessment of whether such gifts, bequests, devises, and personal services have advanced the purposes of this Act.

"(C) AUTHORITY TO CHARGE FEES.—Notwithstanding any other provision of this Act, the Administrator is authorized to charge nominal fees to attendees in order to cover costs for any event or publication produced pursuant to subparagraph (A).

"(D) CONFLICTS OF INTEREST.—No employee of the Administration may accept or solicit any gift, bequest, devise, or donation of personal services if such acceptance or solicitation would, in the opinion of the General Counsel, create a conflict of interest.

"(E) ACCEPTANCE OF SERVICES AND FACILITIES FOR DISASTER LOAN PROGRAM.—The Administrator may accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 7(b). Subparagraph (B) shall not apply to any services or facilities accepted under this subparagraph.

"(7) CO-SPONSORSHIP OF EVENTS.—

"(A) AUTHORIZATION.—The Administrator, after consultation with the General Counsel, may permit any eligible donor of any gift, bequest, devise, or donation of personal services to be a named cosponsor of any event conducted by the Administrator or any publication of the Administrator.

"(B) ELIGIBLE DONOR.—For purposes of this paragraph, the term 'eligible donor' means, with respect to any event or publication, any donor if such donor provides, directly or in-kind, at least 50 percent of the cost of such event or publication, provided further that any such co-sponsorship must be approved by an Associate Administrator, after consultation with the General Counsel.

"(C) LIMITED DELEGATION.—The Administrator may not delegate the authority described in subparagraph (A) except to the Deputy Administrator or any Associate Administrator.

"(D) REPORT TO CONGRESS.—The Inspector General of the Administration shall report semi-annually to Congress on the Administrator's use of co-sponsorship. Such report shall include the Inspector General's assessment of whether such co-sponsorships have advanced the purposes of this Act.

"(d) OTHER PROVISIONS.—

"(1) REQUIREMENTS FOR ASSISTANCE.—No loan shall be made or equipment, facilities, or services furnished by the Administrator under this Act to any business concern unless the owners, partners, or officers of such business concern—

"(A) certify to the Administrator the names of any attorneys, agents, or other persons engaged by or on behalf of such business concern for the purpose of expediting applications made to the Administrator for assistance of any sort, and the fees paid or to be paid to any such persons;

"(B) execute an agreement binding any such business concern for a period of two years after any assistance is rendered by the Administrator to such business concern, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administrator shall have determined involve discretion with respect to the granting of assistance under this Act; and

"(C) furnish the names of lending institutions to which such business concern has applied for loans together with dates, amounts, terms, and proof of refusal.

"(2) AUTHORITY RELATING TO TRANSFER OF FUNCTIONS.—The President may transfer to the Administrator any functions, powers, and duties of any department or agency which relate primarily to small business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

"(3) FAIR CHARGES.—To the fullest extent the Administrator deems practicable, he shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administrator.

"(4) NON-DUPLICATION.—The Administrator shall not duplicate the work or activity of any other department or agency of the Federal Government. Nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

"(5) PREPAYMENT OF RENTALS.—Subsections (a) and (b) of section 3324 of title 31, United States Code, shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

"(6) NONDISCRIMINATION.—In carrying out this Act and the Small Business Investment Act of 1958, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Administrator.

"(7) GROUPS RECEIVING SPECIAL CONSIDERATION.—In providing assistance under this Act and the Small Business Investment Act of 1958, the Administrator shall give special consideration to—

"(A) veterans of the Armed Forces of the United States and their survivors or dependents; and

"(B) small manufacturers.

"(8) UNLAWFUL RESIDENTS.—None of the funds made available pursuant to this Act may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

"(9) OBSCENE PRODUCTS AND SERVICES.—The Administrator is prohibited from providing any financial or other assistance to any business concern or other per-

son engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

"(10) ECONOMIC DATABASE; INDICES AND REPORTS.—The Administrator shall—

"(A) establish and maintain an external small business economic data base for the purpose of providing the Congress and the President information on the economic condition and the expansion or contraction of the small business sector;

"(B) publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include data on—

"(i) employment, layoffs, and new hires;

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

"(iii) number of business formations and failures;

"(iv) sales and new orders;

"(v) back orders;

"(vi) investment in plant and equipment;

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

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

"(ix) debt to equity ratios;

"(x) exports;

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

"(xii) concentration ratios; and

"(C) in consultation with the Chief Counsel for Advocacy, publish annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired pursuant to subparagraph (A).".

(b) RELATED REPEALS.—

(1) Section 13 of the Small Business Act (15 U.S.C. 642) is amended to read as follows:

"SEC. 13. [RESERVED].".

(2) Section 14 of the Small Business Act (15 U.S.C. 643) is amended to read as follows:

"SEC. 14. [RESERVED].".

(3) Section 18 of the Small Business Act (15 U.S.C. 647) is amended to read as follows:

"SEC. 18. [RESERVED].".

SEC. 205. FINANCIAL MANAGEMENT.

(a) IN GENERAL.—Section 5 of the Small Business Act (15 U.S.C. 634) is amended to read as follows:

"SEC. 5. FINANCIAL MANAGEMENT.

"(a) ACCOUNTS.—

"(1) IN GENERAL.—All repayments of loans, debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administrator shall be deposited into appropriate accounts and funds as determined by the Administrator.

"(2) REPORT AND BUDGET.—The Administrator shall submit to the Committees on Appropriations, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter a full and complete report on the status of each of the accounts and funds referred to in paragraph (1). Business-type budgets for each of the accounts and funds referred to in paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed for wholly owned Government corporations under sections 9103 and 9104 of title 31, United States Code.

"(3) ISSUANCE OF NOTES.—

"(A) ISSUANCE.—The Administrator may issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the accounts and funds referred to in paragraph (1) and for authorized expenditures out of the accounts and funds.

"(B) FORM.—The notes authorized by this paragraph shall be in such form and denominations and have such maturities and be subject to such

terms and conditions as may be prescribed by the Administrator with the approval of the Secretary of the Treasury.

"(C) INTEREST RATE.—Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administrator under this paragraph.

"(D) PURCHASE BY TREASURY.—The Secretary of the Treasury shall purchase any notes of the Administration issued under subparagraph (A). For purposes of purchasing such notes, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code. The purposes for which such securities may be issued under such chapter are extended to include the purchase of notes issued by the Administrator under subparagraph (A). All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States.

"(4) PAYMENTS TO TREASURY.—

"(A) EXCESS FUNDS.—Moneys in any account or fund referred to in paragraph (1) which are not needed for current operations shall remain in such account or fund and shall be available solely to carry out the provisions and purposes of programs operated from such account or fund pursuant to law as provided in appropriations Acts.

"(B) ACTUAL INTEREST.—Following the close of each fiscal year, the Administrator shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administrator collects during that fiscal year on all financings made under this Act.

"(C) OTHER INTEREST.—Except on those loan disbursements on which interest is paid under subparagraph (B), the Administrator shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest received by the Administration on financing functions performed under this Act and titles III and V of the Small Business Investment Act of 1958 if the capital used to perform such functions originated from appropriated funds. Such payments shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

"(5) CONTRIBUTIONS TO EMPLOYEES COMPENSATION FUND.—The Administrator shall contribute to the employee's compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the accounts and funds referred to in paragraph (1). The annual billings shall also include a statement of the fair portion of the cost of the administration of such funds, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

"(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in any fiscal year, such sums as may be necessary for losses and interest subsidies incurred by the accounts and funds referred to in paragraph (1) and not previously reimbursed. All borrowing authority contained in this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(b) FINANCIAL MANAGEMENT POWERS.—

"(1) SALE OF FINANCINGS, ETC.—

"(A) IN GENERAL.—The Administrator, under regulations prescribed by him and codified in the Code of Federal Regulations, may assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this Act, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection.

"(B) LIMITATION.—Notwithstanding subparagraph (A), the Administrator shall not sell any portion of the Administration's interest in, or the rights of the Administration with respect to, any loan made directly or through immediate participation under section 7(b), including by direct sale, through the sale of loan participations, or by including such loan in a pool of assets for the purpose of selling asset-backed securities during—

"(i) the 3-year period beginning on the date that such loan was originated; and

"(ii) the 3-month period beginning at the end of such 3-year period if, at any time during the 3-month period ending at the end of such 3-year period, the Administrator was engaged in negotiations with the borrower for the purpose of substantially altering the terms of such loan.

"(2) USE OF FEDERAL RESERVE DEPOSITORIES.—All moneys of the Administrator not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administrator. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administrator in the general performance of its powers conferred by this Act. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administrator. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administrator, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

"(3) REAL PROPERTY.—

"(A) CONVEYANCE.—The Administrator may convey and execute in the name of the Administration deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this Act. Such authority may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney.

"(B) OTHER AUTHORITY.—The Administrator may deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this Act.

"(4) COLLECTIONS.—The Administrator may pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him, including by obtaining deficiency judgments or otherwise in the case of mortgages assigned to the Administrator.

"(5) ACQUISITION OF PROPERTY.—The Administrator may acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in subsection (a) or (b) of section 7.

"(6) POWER OF ATTORNEY.—Nothing in this section shall prevent the Administrator from delegating any authority provided under this section by power of attorney to any officer or agent he may appoint.

"(c) SALE OF GUARANTEED LOANS BY LENDERS.—

"(1) IN GENERAL.—The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administrator shall establish, subject to the following limitations:

"(A) Prior to the approval of the sale, or upon any subsequent sale, of any loan guaranteed by the Administrator, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administrator, the Administrator shall review and approve only materials not previously approved.

"(B) All fees due the Administrator on a guaranteed loan shall have been paid in full prior to any sale.

"(C) Each loan, except each loan made under section 7(a)(14), shall have been fully disbursed to the borrower prior to any sale.

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

"(3) PROCEDURES.—The Administrator shall develop such procedures as are necessary for:

"(A) The facilitation, administration, and promotion of secondary market operations.

"(B) Assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

"(4) CERTAIN REGULATIONS REQUIRED.—The unguaranteed portion of any loan made under section 7(a) shall not be sold unless a final regulation promulgated by the Administrator is in effect that applies uniformly to both depository institutions and other lenders and sets forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

"(5) PREPAYMENTS.—Nothing in this subsection or subsection (d) shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a), the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to subsection (f)(3).

"(d) ISSUANCE OF TRUST CERTIFICATES.—

"(1) IN GENERAL.—The Administrator may issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, or under section 502 of the Small Business Investment Act of 1958. Such trust certificates shall be based on and backed by a trust or pool approved by the Administrator and composed solely of the entire guaranteed portion of such loans.

"(2) GUARANTEE.—

"(A) AUTHORIZATION.—The Administrator 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 Administrator or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. 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 Administrator or its agent pursuant to this subsection.

"(B) PREPAYMENT.—In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool.

"(C) INTEREST; REDEMPTION.—Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administrator only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

"(3) FEES.—

"(A) IN GENERAL.—The Administrator may collect a fee for any loan guarantee sold into the secondary market under subsection (c) 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 Administrator.

"(B) COLLECTION.—Any such fee imposed by the Administrator shall be collected by the Administrator or by the agent which carries out on behalf of the Administrator the central registration functions required by subsection (e) and shall be paid to the Administrator and used solely to reduce the subsidy on loans guaranteed under section 7(a). Any such fee shall not be charged to the borrower whose loan is guaranteed. Nothing in this paragraph shall preclude any agent of the Administrator from collecting a fee approved by the Administrator for the functions described in subsection (e).

"(C) LATE FEES.—The Administrator is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.

"(4) SUBROGATION.—In the event the Administrator pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

"(5) LAWS SUPERSEDED.—No federal, state, or local law, shall preclude or limit the exercise by the Administrator of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

"(e) CENTRAL REGISTRY OF LOANS AND TRUST CERTIFICATES.—

"(1) ESTABLISHMENT.—Upon the adoption of final rules and regulations, the Administrator shall—

"(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (c) and (d);

"(B) contract with an agent to carry out on behalf of the Administrator the central registration functions of this subsection and the issuance of trust certificates to facilitate pooling;

"(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act, and to the purchaser of a trust certificate issued pursuant to subsection (d), information on the terms, conditions, and yield of such instrument; and

"(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (c) and (d).

"(2) BONDING REQUIREMENT.—The agent referred to in paragraph (1)(B) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interest of the Government.

"(3) SELLER.—For purposes of this subsection, the term 'seller', with respect to the sale of any loan, does not include the entity which made the loan or any individual or entity which sells three or fewer guaranteed loans per year.

"(4) BOOK-ENTRY SYSTEM.—Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administrator may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

"(5) AGENT FEES.—The Administrator may compensate an agent described in paragraph (1)(B) through transaction and servicing fees charged to program users and through interest earnings on payments under the agent's control.

"(f) OTHER SPECIAL RULES AND AUTHORITIES RELATED TO LOAN PROGRAMS.—

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

"(2) FEES.—The Administrator may impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees—

"(A) not to exceed $100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

"(B) not to exceed $300 for loan assumptions;

"(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 for which the applicant requests a commitment from the Administrator for funding during the following year;

"(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administrator under the authority of this Act and the Small Business Investment Act of 1958; and

"(E) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this subsection shall be utilized solely to facilitate the administration of the program that generated the excess amounts.

"(3) POWER TO UNDERTAKE AND SUSPEND LOANS.—

"(A) IN GENERAL.—Subject to the requirements and conditions contained in this paragraph, upon application by a small business concern which is the recipient of a loan made under this Act, the Administrator may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administrator. While such payments are being made by the Administrator pursuant to the undertaking of such obligation or while

such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

"(B) REQUIREMENTS.—The Administrator may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this paragraph only if—

"(i) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administrator, become insolvent or remain insolvent;

"(ii) with the undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administrator, become or remain a viable small business concern; and

"(iii) the small business concern executes an agreement in writing satisfactory to the Administrator as provided by subparagraph (D) and takes such actions as are required under subparagraph (E).

"(C) EXTENSION OF MATURITY.—Notwithstanding the provisions of sections 7(a)(10) and 7(i)(1), the Administrator may extend the maturity of any loan on which the Administrator undertakes or suspends the obligation pursuant to this paragraph for a corresponding period of time.

"(D) AGREEMENT.—Prior to the undertaking or suspension by the Administrator of any small business concern's obligation under this subsection, the Administrator, consistent with the purposes sought to be achieved under this paragraph, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

"(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period;

"(ii) pursuant to a repayment schedule agreed upon by the Administrator and the small business concern; or

"(iii) by a combination of the payments described in clauses (i) and (ii).

"(E) SECURITY; OTHER ACTIONS.—The Administrator shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administrator deems appropriate in the circumstances, including the provision of such security as the Administrator deems necessary or appropriate to insure that the rights and interests of the lender (Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

"(F) REQUIRED PAYMENTS.—For purposes of this paragraph, the term 'required payments' means, with respect to any loan, payments of principal and interest under the loan.

"(4) INTEREST RATE ON DEFERRED PARTICIPATION SHARE.—Upon purchase by the Administrator of any deferred participation entered into under section 7, the Administrator may continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness.

"(5) SUBORDINATION TO CERTAIN STATE TAX LIENS.—Any interest held by the Administrator in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

"(g) RISK MANAGEMENT DATABASE.—

"(1) ESTABLISHMENT.—The Administrator shall maintain, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

"(2) CONTENTS.—In addition to such other information as the Administrator considers appropriate, the database established under this subsection shall, with respect to each loan program described in paragraph (1), include information relating to—

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

"(B) the identity of the borrower;

"(C) the total dollar amount of the loan or debenture;

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

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

"(F) the principal line of business of the borrower, as identified by North American Industrial Classification System Code;

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

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

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

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

"(K) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of business, credit history, and type of loan.".

(b) RELATED REPEAL.—Section 17 of the Small Business Act (15 U.S.C. 646) is amended to read as follows:

"SEC. 17. [RESERVED].".

SEC. 206. ORGANIZATION AND STAFF.

(a) IN GENERAL.—Section 6 of the Small Business Act (15 U.S.C. 635) is amended to read as follows:

"SEC. 6. ORGANIZATION AND STAFF.

"(a) GENERAL ORGANIZATIONAL AUTHORITY.—

"(1) OFFICES.—Except as otherwise provided in this Act, the Administrator may create subsidiary offices in the Administration to carry out this Act and the Small Business Investment Act of 1958.

"(2) EMPLOYEES.—The Administrator may, in accordance with applicable provisions of title 5, United States Code, select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out this Act and the Small Business Investment Act of 1958.

"(b) ASSOCIATE ADMINISTRATORS.—The Administrator shall only appoint the following Associate Administrators:

"(1) The Associate Administrator for Capital Access, who shall be appointed from civilian life and have a minimum of five years experience in providing investment or banking services to businesses.

"(2) The Associate Administrator for Government Contracting and Minority Small Business Opportunities, who shall have a minimum of five years of experience in Federal procurement.

"(3) The Associate Administrator for Enterprise Outreach and Training, who shall have a minimum of five years experience in community-based outreach programs.

"(4) The Associate Administrator for Administration and Management, who shall act as the Chief Operating Officer for the Administration and who shall oversee the activities of the regional administrators.

"(c) ESTABLISHMENT OF CERTAIN OFFICES.—There are in the Administration the following offices:

"(1) The Office of Minority Small Business and Capital Ownership Development, which shall be administered by the assistant administrator appointed under subsection (d)(1).

"(2) The Office of Veterans Business, which shall be administered by the assistant administrator appointed under subsection (d)(2).

"(3) The Office of Small Business Development Centers, which shall be administered by the assistant administrator appointed under subsection (d)(3).

"(4) The Office of Investment, which shall be administered by the assistant administrator appointed under subsection (d)(4).

"(5) The Office of Lender Oversight, which shall be administered by the assistant administrator appointed under subsection (d)(5).

"(6) The Office of Congressional and Legislative Affairs, which shall be administered by the assistant administrator appointed under subsection (d)(6).

"(7) The Office of International Trade, which shall be administered by the assistant administrator appointed under subsection (d)(7).

"(8) The Office of Women's Business Ownership, which shall be administered by the assistant administrator appointed under subsection (d)(8).

"(d) ASSISTANT ADMINISTRATORS.—The Administrator shall appoint the following Assistant Administrators:

"(1) The Assistant Administrator for Minority Small Business and Capital Ownership Development, who—

"(A) shall have a minimum of 5 years experience within the Administration in assisting minority small businesses before being appointed under this paragraph;

"(B) shall be responsible for carrying out subsections (a), (b), and (c) of section 8;

"(C) shall be a career employee in the Senior Executive Service; and

"(D) shall report to the Associate Administrator for Government Contracting and Minority Small Business Opportunities.

"(2) The Assistant Administrator for Veterans Business, who—

"(A) shall have a minimum of 5 years experience within the Administration or the Department of Veterans Affairs (or in combination) in providing entrepreneurial outreach to veterans before being appointed under this paragraph;

"(B) shall be responsible for the formulation, execution, and promotion of the 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;

"(C) shall act as an ombudsman for full consideration of veterans in all programs of the Administration;

"(D) shall be a career employee and may be an appointee in the Senior Executive Service; and

"(E) shall report to the Associate Administrator for Enterprise Outreach and Training.

"(3) The Assistant Administrator for Small Business Development Centers who—

"(A) shall have a minimum of 5 years experience in entrepreneurial outreach to small businesses or as an educator in a business program in an institution of higher learning (or in combination), before being appointed under this paragraph;

"(B) shall carry out section 21;

"(C) shall be a career employee and may be an appointee in the Senior Executive Service; and

"(D) shall report to the Associate Administrator for Enterprise Outreach and Training.

"(4) The Assistant Administrator for Investment who—

"(A) shall carry out title III of the Small Business Investment Act of 1958;

"(B) shall be a career employee and may be an appointee in the Senior Executive Service; and

"(C) shall report to the Associate Administrator for Capital Access.

"(5) The Assistant Administrator for Lender Oversight who—

"(A) shall have a minimum of 5 years experience in oversight of lending institutions before being appointed under this paragraph;

"(B) shall carry out section 7(a) and assist the Administrator in carrying out section 23;

"(C) shall be a career employee and may be an appointee in the Senior Executive Service; and

"(D) shall report to the Associate Administrator for Capital Access.

"(6) The Assistant Administrator for Congressional and Legislative Affairs who—

"(A) shall have a minimum of 5 years experience as an employee reimbursed pursuant to the Senators' Clerk Hire Allowance Account established under section 1 of Public Law 100–137 (2 U.S.C. 58c) or the Members' Representational Allowance established under section 101 of the House of Representatives Administrative Reform Technical Corrections Act (2 U.S.C. 57b) or as an employee of a committee of the House or Senate (or in combination) before being appointed under this paragraph; and

"(B) shall report directly to the Administrator.

"(7) The Assistant Administrator for International Trade who—

"(A) shall have a minimum of 5 years experience in international trade matters;

"(B) shall carry out section 22;

"(C) shall be a career employee and may be an appointee in the Senior Executive Service; and

"(D) shall report to the Associate Administrator for Enterprise Training and Outreach.

"(8) The Assistant Administrator for Women's Business Ownership who—

"(A) shall carry out section 29;

"(B) may be an appointee in the Senior Executive Service;

"(C) shall report to the Associate Administrator for Enterprise Outreach and Training;

"(D) shall advise the Administrator on appointments to the Women's Business Council;

"(E) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

"(F) serve as liaison for the National Women's Business Council; and

"(G) oversee the implementation of the program established by section 8(m).

"(e) GENERAL COUNSEL.—The Administrator shall appoint a General Counsel.

"(f) REGIONAL OFFICES.—There are 10 regional offices each of which shall be administered by a regional administrator. Such offices shall have the same jurisdictions as the 10 Federal regions or such regions as are created by statute or by regulation of the Administrator of the General Services Administration.

"(g) DISTRICT OFFICES.—

"(1) ESTABLISHMENT.—The Administrator may establish district offices throughout the United States to provide services under this Act and the Small Business Investment Act of 1958.

"(2) CLOSURE.—Except as provided in paragraph (3), the Administrator may close or combine district offices as the Administrator determines appropriate. The Administrator shall report any such closures to Congress.

"(3) MINIMUM NUMBER.—Each State shall have at least one district office, except that one district office may serve Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) DISTRICT DIRECTORS.—

"(A) IN GENERAL.—Each district office shall have a director appointed by the Administrator whose salary shall not exceed the rate in effect for step 10 of GS–15 of the General Schedule. Each district director shall assist the Administrator in carrying out the programs established by this Act and the Small Business Investment Act of 1958.

"(B) APPEAL OF DECISIONS.—The Administrator shall issue regulations providing procedures for the appeal of any decision made by any district director. Such regulations shall be codified in the Code of Federal Regulations.

"(C) REVIEW AND REMOVAL.—The Administrator shall remove and replace any district director if such district director has failed, with respect to any year, to meet goals developed by the Administrator for increasing—

"(i) the number of loans made pursuant to section 7 (other than section 7(b));

"(ii) the number of participants in the programs established pursuant to section 8;

"(iii) the amount Federal Government procurements from small business concerns or from any subcategory of small business concern referred to in section 15(g); or

"(iv) the amount of dollar financings for small businesses under the Small Business Investment Act of 1958.

"(D) REASSIGNMENT.—Any district director who is removed under subparagraph (C) shall be reassigned by the Administrator as a procurement center representative or a commercial marketing representative, as determined by the Administrator in consultation with the regional administrator. Any such reassignment shall, for the first year after reassignment, be at the same grade and salary.

"(5) DISTRICT COUNSEL.—Each district office shall have a district counsel. Each district counsel shall—

"(A) be assigned by, and report to, the General Counsel;

"(B) provide legal assistance to the district director and employees in the district office; and

"(C) carry out the required review of HUBZone firms specified in section 3.

"(6) BUSINESS OPPORTUNITY SPECIALISTS.—Each district office shall have a minimum number of business opportunity specialists to ensure that effective guidance and oversight are provided to participants in the program established by section 8(a). The specialists shall assist the district director and Assistant Administrator for Minority Small Business and Capital Ownership Development. The majority of the hours worked by the business opportunity specialist shall be devoted to the programs established by section 8(a), unless the district director demonstrates to the Assistant Administrator for Minority Small Busi-

ness and Capital Ownership Development that there are an insufficient number of firms certified pursuant to section 8(a) to require the employee to devote such hours to such programs.

"(7) PROCUREMENT CENTER REPRESENTATIVES.—The Associate Administrator for Government Contracting and Minority Small Business, after consultation with the regional administrators and district directors, shall assign such procurement center representatives to district offices as the Associate Administrator determines to be appropriate. Any procurement center representative assigned to a district office or procuring agency activity shall report to the district director. The Associate Administrator shall assign at least one procurement center representative in each State.

"(8) COMMERCIAL MARKETING REPRESENTATIVE.—The Associate Administrator for Government Contracting and Minority Small Business, after consultation with the regional administrators and district directors, shall assign commercial marketing representatives to district offices as the Associate Administrator determines to be appropriate. Any commercial marketing representative assigned to a district office shall report to the district director.

"(h) GENERAL PERSONNEL AUTHORITY.—

"(1) EXPERTS AND CONSULTANTS.—The Administrator may procure, for purposes of carrying out this Act and the Small Business Investment Act of 1958, temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(2) TRAVEL EXPENSES.—Each employee may, at the discretion of the Administrator, receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code. Notwithstanding such subchapter, the Administrator may pay the transportation expenses and per diem in lieu of subsistence expenses, for travel of any person employed by the Administration to render temporary services not in excess of 6 months in connection with any disaster referred to in section 7(b) from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment. The Administrator may extend the 6-month limitation for an additional 6 months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities.

"(3) NOTARY PUBLIC EXPENSES.—The Administrator may pay the costs of any employee to qualify as a notary public.

"(4) DELEGATIONS.—Except as otherwise provided in this Act or the Small Business Investment Act of 1958, the Administrator may delegate a function or responsibility to any employee of the Administration. The Administrator shall provide by regulation codified in the Code of Federal Regulations the procedures for determining which delegations are to be codified in the Code of Federal Regulations. With respect to any delegations not promulgated by regulation, the Administrator shall collect and collate such delegations and place them in a prominent location on the website maintained for the Administration.

"(5) ADMINISTRATION WEB SITE.—Not later than 30 days after the enactment of this subsection, the Administrator shall redesign the web site of the Administration so that the delegations under paragraph (4) and the organizational chart of the Administration (including the names of the officials serving in those capacities), links to the homepage of each office, and standard operating procedures, have a prominent link on the homepage of the Administration. Any subsequent redesign after compliance with this paragraph shall ensure that the information required by this paragraph maintains a prominent place on the homepage of the Administration.".

(b) CONFORMING AMENDMENTS.—

(1) So much of section 22 of the Small Business Act (15 U.S.C. 649) as precedes subsection (b) is amended to read as follows:

"SEC. 22. OFFICE OF INTERNATIONAL TRADE.

"(a) Except as otherwise provided in this section, the powers, duties, and responsibilities described in this section shall be carried out by the Assistant Administrator for International Trade.".

(2) Subsection (b) of section 22 of the Small Business Act (15 U.S.C. 649) is amended by striking "The Office" the first place it appears and inserting "The Office of International Trade".

(c) RELATED REPEAL.—Section 32 of the Small Business Act (15 U.S.C. 657b) is amended to read as follows:

"SEC. 32. [RESERVED].".

(d) TRANSITION RULES.—

(1) EXCEPTION TO SALARY LIMITATION OF DISTRICT DIRECTORS.—The salary limitation specified in section 6(g)(4)(A) of the Small Business Act (as amended by this section) shall not apply with respect to any district director whose salary exceeds such limitation on July 1, 2003.

(2) REMOVAL AND REASSIGNMENT OF DEPUTY DISTRICT DIRECTORS.—

(A) REMOVAL.—The Administrator may not appoint any individual to serve as a deputy district director. Any individual serving as a deputy district director on the date of the enactment of this Act shall be removed from such position and reassigned as provided in this paragraph.

(B) REASSIGNMENT.—Any individual removed from office under subparagraph (A) shall be reassigned by the Administrator as a procurement center representative or a commercial marketing representative, as determined by the Administrator in consultation with the regional administrator. Any such reassignment shall be at not less than the grade and salary which applied to such individual prior to reassignment.

SEC. 207. LOAN PROGRAMS.

(a) SMALL BUSINESS LOAN PROGRAM.—So much of section 7 of the Small Business Act (15 U.S.C. 636) as precedes subsection (b) is amended to read as follows:

"SEC. 7. LOAN PROGRAMS.

"(a) SMALL BUSINESS LOAN PROGRAM.—

"(1) LOAN AUTHORITY.—The Administrator may, to the extent and in such amounts as provided in advance in appropriation Acts, make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital to any small business concern, including those owned by qualified Indian tribes for purposes of this Act.

"(2) METHODS OF PARTICIPATION.—The Administrator may make such loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis, except that no immediate participation may be purchased unless it is shown that a deferred participation is not available and no direct financing may be made unless it is shown that a participation is not available.

"(3) NO CREDIT ELSEWHERE.—The Administrator may not make a loan under this subsection if the applicant can obtain credit elsewhere.

"(4) CRIMINAL BACKGROUND CHECK.—Before making any loan under this subsection or section 502 or 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

"(5) SOUND AND SECURE REQUIREMENT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, any loan made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

"(B) SPECIAL RULES.—For purposes of subparagraph (A), any reasonable doubt regarding the likelihood of repayment shall be resolved in favor of the applicant if the applicant is—

"(i) a disabled person (as defined in paragraph (8)); or

"(ii) a small manufacturer.

"(C) COLLATERAL.—The Administrator shall not refuse to make a loan under this subsection solely due to inadequate collateral, but a loan shall be secured as fully as possible with available assets. If the assets of the business are not sufficient to fully secure the loan, other assets of the owners of the small business concern may be taken as collateral to the extent the aggregate amount of collateral does not exceed the amount necessary to fully secure the loan.

"(6) 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 Administrator 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 $150,000; or

"(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to $150,000.

"(B) REDUCED PARTICIPATION UPON REQUEST.—

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

"(ii) PROHIBITION.—The Administrator 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) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14), such participation by the Administrator shall not exceed 90 percent.

"(D) CERTAIN RURAL AREAS.—

"(i) IN GENERAL.—In the case of a loan to a qualified rural small business concern, this paragraph shall be applied by substituting '90 percent' for—

"(I) '75 percent' in subparagraph (A)(i); and

"(II) '85 percent' in subparagraph (A)(ii).

"(ii) QUALIFIED RURAL SMALL BUSINESS CONCERN.—For purposes of this subparagraph, the term 'qualified rural small business concern' means a small business concern located in—

"(I) a rural area (as defined in section 343(a)(13) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a))); and

"(II) a district with respect to which the dollar value and number of loans made under this subsection are both less than the average for districts in the State.

"(7) MAXIMUM LOAN AMOUNTS.—No loan shall be made under this subsection—

"(A) if the total amount outstanding and committed (by participation or otherwise) solely for purposes of this subsection to the borrower would exceed $1,000,000 (or if the gross loan amount would exceed $2,000,000), except as provided in subparagraph (B);

"(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower would exceed $2,000,000 of which not more than $1,200,000 may be used for working capital, supplies, or financings under paragraph (14) for export purposes; and

"(C) if made either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed $350,000.

"(8) INTEREST RATES.—

"(A) MAXIMUM RATE SET BY ADMINISTRATOR.—Notwithstanding any State limitation on the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administrator.

"(B) IMMEDIATE AND DIRECT LOANS.—The rate of interest for the Administrator's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest ⅛ of 1 percent, and an additional amount as determined by the Administrator, but not to exceed 1 percent per year.

"(C) PREFERRED LENDERS PROGRAM.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program conducted pursuant to paragraph (31) shall not exceed the maximum interest rate, as determined by the Administrator, applicable to other loans guaranteed under this subsection.

"(D) DISABLED PERSONS.—

"(i) IN GENERAL.—The maximum interest rate for a loan made under this subsection to a disabled person for the establishment, acquisition or operation of a small business concern shall be 3 percent per year.

"(ii) DISABLED PERSON.—For the purposes of this subparagraph, the term 'disabled person' means any individual who—

"(I) is a service-disabled veteran; or

"(II) has a disability (as defined in section 3 of the Americans with Disabilities Act of 1990) which limits such individual's selection of any type of employment for which such individual would otherwise be qualified or qualifiable.

"(9) PREPAYMENT CHARGES.—

"(A) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administrator a subsidy recoupment fee calculated in accordance with subparagraph (B) if—

"(i) the loan is for a term of not less than 15 years;

"(ii) the prepayment is voluntary;

"(iii) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

"(iv) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

"(B) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under subparagraph (A) shall be—

"(i) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

"(ii) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

"(iii) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

"(10) MAXIMUM TERM.—No loans made under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding 25 years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of 25 years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

"(11) CONSTRUCTION AND REHABILITATION OF REAL PROPERTY.—The Administrator may make a loan under this subsection to finance residential or commercial construction or rehabilitation for sale if such loan is not used primarily for the acquisition of land.

"(12) UNEMPLOYED AND LOW-INCOME INDIVIDUALS.—The Administrator may make loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern, if the Administrator determines that such loan will further the policies established in section 2, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

"(13) STATE AND LOCAL DEVELOPMENT COMPANIES.—The Administrator may make loans under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

"(14) EXPORT WORKING CAPITAL PROGRAM.—

"(A) IN GENERAL.—The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets.

"(B) INTEREST RATES.—A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

"(C) CRITERIA FOR LOANS.—When considering loan or guarantee applications, the Administrator shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including small manufacturers and agricultural concerns, in the export market.

"(D) MARKETING.—The Administrator shall aggressively market its export financing program to small businesses.

"(15) QUALIFIED EMPLOYEE TRUSTS.—

"(A) LOAN GUARANTEES.—The Administrator may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 percent of the stock of the concern. A qualified employee trust shall be eligible for any loan guarantee under this subsection with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

"(B) APPROVAL OF PLAN.—The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administrator by the trustee of such trust with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

"(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1986, at least 51 percent of the total stock of such concern shall be allocated to the accounts of at least 51 percent of the employees of such concern who are entitled to share in such allocation;

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

"(iii) there will be adequate management to assure management expertise and continuity.

"(C) CERTAIN CHARACTERISTICS OF EMPLOYEE-OWNERS DISREGARDED.—In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except that the business experience of employee-owners who assume managerial responsibilities may be considered.

"(D) CERTAIN CORPORATIONS TREATED AS SMALL BUSINESS CONCERNS.—For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

"(16) INTERNATIONAL TRADE.—

"(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern in an industry engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern in—

"(i) the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

"(ii) the refinancing of existing indebtedness which is not structured with reasonable terms and conditions.

"(B) SECURITY.—Each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the concern.

"(C) ENGAGED IN OR ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern shall be considered to be engaged in or adversely affected by international trade if such concern is determined by the Administrator (under regulations prescribed by the Administrator to be—

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

"(ii) adversely affected by import competition in that it—

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

"(II) can demonstrate injury attributable to such competition.

"(D) FINDINGS BY INTERNATIONAL TRADE COMMISSION.—For purposes of subparagraph (C)(ii)(II), the Administrator shall accept any finding of injury by the International Trade Commission.

"(17) AUTHORIZED LENDING INSTITUTIONS.—The Administrator shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

"(18) GUARANTEE FEES.—

"(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, but which may be collected in advance by the lender from the borrower, as follows:

"(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

"(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

"(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

"(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

"(19) CERTIFIED LENDERS PROGRAM.—

"(A) IN GENERAL.— There is a Certified Lenders Program for lenders who establish their knowledge of laws and regulations concerning the guaranteed loan program and their proficiency in program requirements as set forth in regulations codified in the Code of Federal Regulations.

"(B) SUSPENSION AND REVOCATION OF DESIGNATION.—The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administrator determines that the lender is not adhering to established rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

"(C) AUTHORITY TO LIQUIDATE LOANS.—

"(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administrator pursuant to a liquidation plan approved by the Administrator.

"(ii) AUTOMATIC APPROVAL.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

"(20) MINORITY BUSINESS DEVELOPMENT PROGRAM PARTICIPANTS.—

"(A) IN GENERAL.—The Administrator may make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under section 8(a). Such assistance may be provided only if the Administrator determines that—

"(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

"(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

"(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

"(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

"(B) MAXIMUM AMOUNT OF LOANS.—No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

"(C) MINIMUM PARTICIPATION.—Subject to the limitation of subparagraph (B), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administrator shall be not less than 85 percent of the balance of the financing outstanding at the time of disbursement.

"(D) INTEREST RATE.—The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

"(E) METHODS OF PARTICIPATION.—No immediate participation may be purchased under this paragraph unless it is shown that a deferred participation is not available. No direct financing may be made under this paragraph unless it is shown that a participation is unavailable. A direct loan or the Administrator's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

"(i) that is subordinated by its terms to all other borrowings of the issuer;

"(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest ⅛ of 1 percent;

"(iii) the term of which is not more than 25 years;

"(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administrator; and

"(v) the interest on which is payable not less often than annually.

"(21) CLOSURE OF DOD INSTALLATIONS.—

"(A) IN GENERAL.—The Administrator may make loans on a guaranteed basis under the authority of this subsection—

"(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

"(I) the closure (or substantial reduction) of a Department of Defense installation; or

"(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

"(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

"(B) REASONABLE DOUBT GIVEN TO APPLICANT.—Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (5).

"(C) AUTHORIZATION.—Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

"(D) QUALIFIED INDIVIDUAL.—For purposes of this paragraph a qualified individual is—

"(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

"(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

"(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

"(E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administrator shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

"(i) have the greatest potential for—

"(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

"(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

"(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

"(22) LATE FEES.—The Administrator may permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

"(23) ANNUAL FEE.—

"(A) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administrator shall, in accordance with such terms and procedures as the Administrator shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.

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

"(C) AGENTS.—The Administrator may contract with any agent to carry out, on behalf of the Administrator, the assessment and collection of annual fees referred to in subparagraph (A). Such agent may receive as compensation for services any interest earned on the fees while in such agent's con-

trol and prior to the time when the agent, pursuant to contract, is required to remit the fees to the Administrator.

"(24) NOTIFICATION REQUIREMENT.—The Administrator shall notify the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection, including the establishment of any pilot project pursuant to paragraph (25).

"(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

"(A) LIMITATION ON NUMBER.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after January 1, 1994.

"(B) DOLLAR LIMITATIONS.—

"(i) IN GENERAL.—In the case of any pilot program established on or after the date of the enactment of this subparagraph, no loan shall be made under such program if such loan would result in the total amount of loans made during the fiscal year under all such programs to be in excess of 5 percent of the total amount of loans guaranteed in such fiscal year under this subsection.

"(ii) CERTAIN PRE-EXISTING PROGRAMS.—In the case of any pilot program established before the date of the enactment of this subparagraph, no loan shall be made under such program if such loan would result in the total amount of loans made during the fiscal year under all such programs to be in excess of 15 percent of the total amount of loans guaranteed in such fiscal year under this subsection.

"(C) MAXIMUM TERM.—The duration of any pilot program authorized by this paragraph shall not exceed 3 years. For purposes of this subparagraph, a pilot program shall not be treated as a new pilot program solely on the basis of a modification or change in a pilot program, including the change of its name. With respect to any pilot program in existence on the date of the enactment of this subparagraph, this subparagraph shall apply without regard to any period ending before such date.

"(D) REGULATIONS.—With respect to each pilot program under this subsection, the Administrator shall—

"(i) promulgate regulations for such program pursuant to section 553(b) of title 5, United States Code;

"(ii) provide not less than 60 days for notice and comment on such regulations; and

"(iii) ensure that such regulations are codified in the Code of Federal Regulations.

In the case of any pilot program established after the date of the enactment of this subparagraph, such program shall not go into effect until after the requirements of this subparagraph are satisfied.

"(E) PILOT PROGRAM.—For purposes of this paragraph, the term 'pilot program' means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

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

"(27) LOW DOCUMENTATION LOAN PROGRAM.—

"(A) IN GENERAL.—The Administrator may issue guarantees under this subsection for loans of $150,000 or less with less documentation than would otherwise be required by the Administrator under this subsection.

"(B) REGULATIONS.—Not later than 120 days after the date of the enactment of this paragraph, the Administrator shall promulgate regulations to carry out the provisions of this paragraph after the opportunity for notice and comment pursuant to section 553(b) of title 5, United States Code. Such regulations shall be codified in the Code of Federal Regulations.

"(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administrator, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

"(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

"(A) shall be required by the Administrator in connection with any such loan for more than $250,000; or

"(B) may be required by the Administrator or the lender in connection with any such loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

"(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

"(31) PREFERRED LENDERS PROGRAM.—

"(A) IN GENERAL.—There is a Preferred Lenders Program.

"(B) PARTICIPATION.—The Administrator may designate a preferred lender under this paragraph only if the lender demonstrates knowledge of the Small Business Act and the regulations promulgated thereunder and establishes to the satisfaction of the Administrator that it—

"(i) has the ability to process, close, service, and liquidate loans;

"(ii) has the ability to develop and analyze complete loan packages; and

"(iii) has a satisfactory performance history of participation in the lending program established under this subsection as demonstrated by a default rate that does not exceed—

"(I) the national average; or

"(II) in the case any lender which made at least 20 percent of its loans in Alaska, Hawaii, State-designated enterprise zones, enterprise zones, empowerment zones, enterprise communities, or labor surplus areas as determined by the Department of Labor, or to small manufacturers, the national average plus 2 percentage points.

"(C) DELEGATED AUTHORITY.—With respect to loans made under this subsection, preferred lenders shall, without prior approval of the Administrator:

"(i) Determine creditworthiness and eligibility.

"(ii) Make and close loans with a guarantee from the Administrator.

"(iii) Monitor loan performance.

"(iv) Service and collect the loans.

"(v) Foreclose and liquidate loans.

"(D) PROHIBITED ACTIVITIES.—A preferred lender shall not take any action that creates an actual or apparent conflict of interest or places the Federal Government's guarantee at significant risk beyond the risk associated with loan nonperformance.

"(E) AREA OF OPERATIONS.—The designation by the Administrator of a lender to participate in the program established pursuant to this paragraph shall authorize the activities described in subparagraph (C) only with respect to small business concerns located in areas served by such office or offices as the Administrator designates with respect to such lender.

"(F) DESIGNATION AS NATIONAL PREFERRED LENDERS.—The Administrator, upon application, may designate a preferred lender as a national preferred lender. A national preferred lender may conduct the activities described in subparagraph (C) with respect to each area served by an office of the Administrator. The Administrator shall not grant such designation unless the applicant demonstrates—

"(i) operation as a preferred lender in at least 5 States or within the territory served by at least 10 offices of the Administrator for a period of not less than 3 years;

"(ii) issuance of a minimum of 50 loans per year as a preferred lender;

"(iii) centralization of approval, loan servicing and liquidation functions that meet such standards as the Administrator may establish by regulations, which are promulgated after notice and the opportunity for public comment not later than 180 days after the date of the enactment of this clause;

"(iv) maintenance of uniform written policies and procedures on the issuance of loans guaranteed under this subsection;

"(v) maintenance of a portfolio of loans guaranteed under this subsection that do not exceed the national average default, currency, and recovery rates for preferred lenders; and

"(vi) receipt of a substantially satisfactory compliance review rating from the Administrator in its most recent audit and examination as a preferred lender and a small business lending company, if applicable, or has received a substantially satisfactory rating as a result of a follow-up review.

"(G) CORRECTIVE ACTION.—If a national preferred lender is deficient with respect to any requirement described in subparagraph (F), the Administrator shall notify such lender in writing and shall provide the lender a reasonable period of time to conform to such requirements before taking any corrective action.

"(H) SUSPENSION OR REVOCATION.—The Administrator may, depending upon the severity of the failure to comply with the standards set forth in this paragraph, suspend or revoke a lender's status as a preferred lender or a national preferred lender. Any such suspension or revocation shall not affect any outstanding guarantee.

"(I) LIMITATION ON DELEGATION.—No authority under this paragraph may be delegated to any employee of the Administration who is based in a regional or district office.

"(32) SIMPLIFIED FORM FOR SMALL GUARANTEES.—The Administrator shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for loans of $50,000 or less in guarantees to eligible applicants.

"(33) SPECIAL RULE ON AFFILIATION.—A business concern applying for assistance under this subsection shall be considered small for purposes of this subsection without regard to affiliation with another business concern if the applicant has no legal recourse to have its affiliate repay any of its debt obligations.".

(b) DISASTER LOAN PROGRAM.—Subsection (b) of section 7 of the Small Business Act (15 U.S.C. 636) is amended to read as follows:

"(b) DISASTER LOAN PROGRAM.—

"(1) PHYSICAL LOSS DISASTER LOANS.—

"(A) LOAN AUTHORITY.—Except as to agricultural enterprises, the Administrator may, to the extent and in such amounts as provided in advance in appropriation Acts, make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administrator may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters.

"(B) LOAN AMOUNT.—The amount of any loan made under this paragraph shall be equal to 100 percent of the loss except that the amount of the loan shall be reduced by—

"(i) any amount covered by insurance or otherwise; or

"(ii) in the case of a loan used to refinance a mortgage or other lien, any amount covered by insurance or otherwise.

"(C) SPECIAL RULES.—The Administrator shall not—

"(i) reduce the loan amount on real estate to below $100,000 unless the amount of loss calculated under subparagraph (B) is less than $100,000;

"(ii) reduce the loan amount on personal property, whether held by a homeowner or lessee, to below $20,000, unless the amount of the loss calculated under subparagraph (B) is less than $20,000;

"(iii) take into account for purposes of subparagraph (B) any sums made available for refinancing pursuant to subparagraph (D); or

"(iv) require collateral for loans of $10,000 or less.

"(D) REFINANCINGS.—Such loans may be used to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern except that the Administrator shall not make any loan or guarantee under this paragraph unless the Administrator finds—

"(i) the applicant is not able to obtain credit elsewhere;

"(ii) such property is to be repaired, rehabilitated, or replaced; and

"(iii) the amount refinanced shall not exceed the amount of physical loss sustained.

"(E) INCREASE FOR MITIGATING MEASURES.—The Administrator may increase the amount of any loan under this subsection by up to an additional 20 percent if he determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including construction of retaining

walls and sea walls, grading and contouring land, relocating utilities and modifying structures.

"(2) ECONOMIC INJURY DISASTER LOANS.—

"(A) LOAN AUTHORITY.—Except as to agricultural enterprises (other than small agricultural cooperatives), the Administrator may, to the extent and in such amounts as provided in advance in appropriation Acts, make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis as the Administrator may determine to be necessary or appropriate to any small business concern or small agricultural cooperative located in an area affected by a disaster (which shall include all of the county in which the disaster occurred and counties contiguous to the county of the disaster as determined by the President or Administrator), if the Administrator determines that the concern or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

"(i) a major disaster, as determined by the President under the Disaster Relief and Emergency Assistance Act; or

"(ii) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961); or

"(iii) a disaster, as determined by the Administrator.

"(B) STATE CERTIFICATION.—If no disaster declaration has been issued under subparagraph (A), the Governor of a State in which a disaster has occurred may certify to the Administrator that small business concerns or small agricultural cooperatives have suffered economic injury as a result of such disaster and are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administrator may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

"(C) UNABLE TO OBTAIN CREDIT ELSEWHERE.—No loan or guarantee shall be extended pursuant to this paragraph unless the Administrator finds that the applicant is not able to obtain credit elsewhere.

"(3) ESSENTIAL EMPLOYEES CALLED TO ACTIVE DUTY.—

"(A) DEFINITIONS.—For purposes of this paragraph:

"(i) ESSENTIAL EMPLOYEE.—The term 'essential employee' means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

"(ii) PERIOD OF MILITARY CONFLICT.—The term 'period of military conflict' has the meaning given the term in subsection (n)(1).

"(iii) SUBSTANTIAL ECONOMIC INJURY.—The term 'substantial economic injury' means an economic harm to a business concern that results in the inability of the business concern—

"(I) to meet its obligations as they mature;

"(II) to pay its ordinary and necessary operating expenses; or

"(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

"(B) LOAN AUTHORITY.—The Administrator may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

"(C) PERIOD OF ELIGIBILITY.—A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 90 days after the date on which such essential employee is discharged or released from active duty.

"(D) INTEREST RATE.—Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury disaster loans under paragraph (2).

"(E) MAXIMUM LOAN AMOUNT.—No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $1,500,000, unless the applicant can establish pur-

suant to regulations promulgated by the Administrator pursuant to paragraph (9) that this maximum should be waived.

"(F) NO DISASTER DECLARATION REQUIRED.—For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

"(4) SPECIAL RULE TO DETERMINE SMALL CONCERNS.—For purposes of this subsection, a business concern and an agricultural cooperative are considered small if the business concern or agricultural cooperative has 500 or fewer employees.

"(5) MAXIMUM TERM.— Except as provided in paragraph (6), no loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding 30 years. No loan described in paragraph (11)(D)(iii) shall be made for a period or periods exceeding 3 years.

"(6) SUSPENSION OF PAYMENTS.—

"(A) IN GENERAL.—The Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period of not to exceed 5 years, if—

"(i) the borrower under such loan is a homeowner or a small business concern;

"(ii) the loan was made to enable—

"(I) such homeowner to repair or replace his home; or

"(II) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster described in clause (i) or (ii) of paragraph (2)(A); and

"(iii) the Administrator determines such action is necessary to avoid severe financial hardship.

"(B) PURCHASE OF NON-FEDERAL SHARE.—During any period in which principal and interest charges are suspended on the Federal share of any loan under this paragraph, the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan. No such payments shall be made by the Administrator in behalf of any borrower unless—

"(i) the Administrator determines that such action is necessary in order to avoid a default; and

"(ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this clause.

"(7) ADDITIONAL DISASTER AREAS.—The Administrator shall promulgate regulations for determining under what circumstances loans can be made under paragraph (2)(A) in counties beyond the counties designated pursuant to clause (i), (ii), or (iii) of paragraph (2)(A).

"(8) CIVIL PENALTY FOR MISUSE OF LOAN.—Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to 150 percent of the original principal amount of the loan.

"(9) MAXIMUM LOAN AMOUNT.—The Administrator shall establish by regulation the maximum amount of indebtedness which may be committed to any borrower under this subsection. Such regulation shall be codified in the Code of Federal Regulations and shall specify the conditions under which the Administrator shall waive any such maximum based on the need to speed economic recovery of the region.

"(10) MAXIMUM GUARANTEED PARTICIPATION.—In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administrator shall not be in excess of 90 percent of the balance of the loan outstanding at the time of disbursement.

"(11) INTEREST RATE.—The interest rate on the Federal share of any loan made under paragraph (1) or (2) shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster but shall otherwise be—

"(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than ½ the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 percent per year as determined by the Administrator, and adjusted to the nearest ⅛ of 1 percent, but not to exceed 4 percent per year;

"(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 percent per year as determined by the Administrator, and adjusted to the nearest ⅛ of 1 percent, but not to exceed 8 percent per year;

"(C) in the case of a business or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 percent per year; or

"(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not to excess of the lowest of—

"(i) the rate prevailing in the private market for similar loans,

"(ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a), or

"(iii) 8 percent per year.

"(12) NOTICE TO BORROWERS.—

"(A) IN GENERAL.—The Administrator shall ensure that each borrower under this subsection receives a notice described in subparagraph (B) upon applying for any loan under this subsection and upon the disbursement of any loan under this subsection.

"(B) CONTENTS OF NOTICE.—A notice is described in this subparagraph if such notice includes the following information with respect to loans made under this subsection:

"(i) A description of the collection practices of the Administration for such loans, including a description of any actions the Administrator may take to collect a delinquent or non-current loan.

"(ii) A description of the practices of the Administration with respect to selling the rights and interests of the Administration in such loans, including a description of the effects of such a sale on the borrower.

"(iii) A description of the rights of the borrower with respect to such loan under applicable Federal laws.

"(iv) A telephone number for contacting the Administrator regarding such loan.".

(c) EXTENSION OR RENEWAL.—Subsection (c) of section 7 of the Small Business Act (15 U.S.C. 636) is amended to read as follows:

"(c) EXTENSION OR RENEWAL.—

"(1) IN GENERAL.—The Administrator may further extend the maturity of or renew any loan made pursuant to this section for additional periods not to exceed 10 years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

"(2) LIMITATION.—No loan made under subsection (b) shall be extended under this subsection if the loan has a maturity in excess of 20 years.".

(d) MICROLOAN PROGRAM.—Subsection (m) of section 7 of the Small Business Act (15 U.S.C. 636) is amended to read as follows:

"(m) MICROLOAN PROGRAM.—

"(1) PURPOSES.—The purposes of the Microloan Program are—

"(A) to assist women, low-income, veteran, and minority entrepreneurs and business owners, small manufacturers, and other individuals possessing the capability to operate successful business concerns;

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

"(C) to establish a microloan program to be administered by the Administrator—

"(i) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than $10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

"(ii) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

"(iii) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-in-

come entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees;

"(iv) to report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

"(v) to establish a welfare-to-entrepreneurship microloan initiative, which shall be administered by the Administrator, in order to test the feasibility of supplementing the technical assistance grants provided under this subsection to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in establishing small businesses and eliminating their dependence on that assistance.

"(2) ESTABLISHMENT.—There is a Microloan Program, under which the Administrator may, consistent with the requirements of this subsection—

"(A) make direct loans to eligible intermediaries for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns;

"(B) in conjunction with such loans make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

"(C) make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed $50,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

"(3) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B) and (C) of paragraph (2) if it has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers or equivalent experience, as determined by the Administrator provided that the equivalent experience evidences the capability of the intermediary to assist microloan borrowers.

"(4) INTERMEDIARY APPLICATIONS.—As part of its application for a loan, each intermediary shall submit a description to the Administrator of—

"(A) the type of businesses to be assisted;

"(B) the size and range of loans to be made;

"(C) the geographic area to be served and its economic, poverty, and unemployment characteristics;

"(D) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

"(E) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

"(F) the local economic credit markets, including the costs associated with obtaining credit locally;

"(G) the qualifications of the applicant to carry out the purpose of this subsection; and

"(H) any plan to involve other technical assistance providers (such as volunteers recruited under section 12(b) or counselors from small business development centers) or private sector lenders in assisting selected business concerns.

"(5) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the program established under this subsection, the Administrator shall give priority to those applicants that provide loans in amounts averaging not more than $10,000 and to those applicants that primarily serve small manufacturers.

"(6) INTERMEDIARY CONTRIBUTION.—As a condition of any loan made to an intermediary under this subsection, the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

"(7) LOANS TO INTERMEDIARIES.—

"(A) LOAN LIMITS.—No loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding

outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed $750,000 in the first year of such intermediary's participation in the program, and $3,500,000 in the remaining years of the intermediary's participation in the program.

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

"(C) DELAYED PAYMENTS.—The Administrator shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

"(D) FEES; COLLATERAL.—Except as otherwise provided in this subsection, the Administrator shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

"(E) INTEREST RATES.—

"(i) IN GENERAL.—Loans made by the Administrator under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest ⅛ of 1 percent.

"(ii) CERTAIN SMALL LOANS.—Notwithstanding clause (i), loans made by the Administrator to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than $10,000, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest ⅛ of 1 percent.

"(iii) MULTIPLE SITES OR OFFICES.—Clause (ii) shall apply to each separate loan-making site or office of an intermediary only if such site or office meets the requirements of that clause.

"(iv) RATE BASIS.—The applicable rate of interest under this subparagraph shall—

"(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administrator prior to the end of such year; and

"(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

"(8) LOSS RESERVE OF INTERMEDIARIES.—

"(A) IN GENERAL.—The Administrator shall, by regulation to be codified in the Code of Federal Regulations, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administrator under this subsection are repaid.

"(B) AMOUNT OF RESERVE FUND.—The Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

"(C) REDUCTION OF REQUIRED AMOUNT.—Notwithstanding subparagraph (B), the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary. The Administrator may reduce the annual loan loss reserve requirement of an intermediary under this subparagraph only if the intermediary demonstrates to the satisfaction of the Administrator that—

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

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

"(D) REVIEW BY ADMINISTRATOR.—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

"(9) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

"(A) IN GENERAL.—An eligible intermediary shall make fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under paragraph (7) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

"(B) LOAN AMOUNT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than $15,000. An intermediary may make a loan under this subsection of more than $20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than $50,000, or have outstanding or committed to any 1 borrower more than $50,000.

"(C) INTEREST LIMIT.—Notwithstanding any State limitation on the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administrator—

"(i) in the case of a loan of more than $10,000 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

"(ii) in the case of a loan of not more than $10,000 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

"(D) REVIEW RESTRICTION.—The Administrator shall not review individual microloans made by intermediaries prior to approval.

"(E) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

"(10) PROGRAM FUNDING FOR MICROLOANS.—

"(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administrator may fund, on a competitive basis, not more than 300 intermediaries.

"(B) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administrator shall make available for award in each State an amount equal to the sum of—

"(i) the lesser of—

"(I) $800,000; or

"(II) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

"(ii) any additional amount, as determined by the Administrator.

"(C) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administrator determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under subparagraph (B) during that fiscal year, the Administrator may make that portion available for award in any one or more States without regard to subparagraph (B).

"(11) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administrator shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

"(12) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—The Administrator may make grants described in paragraph (2)(B) in accordance with the following requirements:

"(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under this subsection shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

"(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

"(C) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

"(i) IN GENERAL.—Each intermediary that has a portfolio of loans made under this subsection that averages not more than $10,000 during the period of the intermediary's participation in the program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection, in addition to grants made under subparagraph (A).

"(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

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

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

"(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—Each intermediary may expend grant funds received under this subsection to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection and may enter into contracts with third parties to provide such information and assistance.

"(13) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS.—Grants described in paragraph (2)(C) shall be subject to the following requirements:

"(A) GRANT AMOUNTS.—Subject to the requirements of subparagraph (B), the Administrator may make not more than 55 grants annually, each in amounts not to exceed $200,000 for the purposes specified in paragraph (2)(C).

"(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administrator shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

"(14) GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES.—

"(A) IN GENERAL.—The Administrator may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

"(B) ASSISTANCE AMOUNT.—The Administrator shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing to achieve the purpose set forth in subparagraph (A).

"(C) WELFARE-TO-ENTREPRENEURSHIP MICROLOAN INITIATIVE.—Of amounts made available to carry out the welfare-to-entrepreneurship microloan initiative in any fiscal year, the Administrator may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-entrepreneurship microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-entrepreneurship transition, and other related issues, to operate a successful welfare-to-entrepreneurship microloan initiative.

"(15) EVALUATION OF WELFARE-TO-ENTREPRENEURSHIP MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the welfare-to-entrepreneurship microloan initiative, including a description of the amounts made available to carry out such initiative.

"(16) DEFINITIONS.—For purposes of this subsection—

"(A) INTERMEDIARY.—The term 'intermediary' means—

"(i) a private, nonprofit entity;

"(ii) a private, nonprofit community development corporation;

"(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

"(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

"(I) no application is received from an eligible nonprofit organization; or

"(II) the Administrator determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

"(v) an agency of or nonprofit entity established by a Native American Tribal Government, that seeks to borrow or has borrowed funds from the Administrator to make microloans to small business concerns under this subsection.

"(B) MICROLOAN.—The term 'microloan' means a fixed rate loan of not more than $50,000, made by an intermediary to a startup, newly established, or growing small business concern.

"(C) RURAL AREA.—The term 'rural area' means any political subdivision or unincorporated area—

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

"(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Administrator has determined such political subdivision or area to be rural.".

(e) REPEAL OF CERTAIN PROVISIONS OF SECTION 7 OF THE SMALL BUSINESS ACT.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended—

(1) by striking subsection (d) and inserting the following:

"(d) [Reserved].";

(2) by striking subsection (h) and inserting the following:

"(h) [Reserved].";

(3) by striking subsection (j) and inserting the following:

"(j) [Reserved]."; and

(4) by striking subsection (k) and inserting the following:

"(k) [Reserved].".

(f) CONTINUATION OF TEMPORARY PREDISASTER MITIGATION PROGRAM.—

(1) IN GENERAL.—There is a predisaster mitigation program under which the Administrator may make, under section 7(b)(1) of the Small Business Act (15 U.S.C. 636(b)(1)) such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this paragraph unless the Administrator finds that the small business is otherwise unable to obtain credit for the purposes described in this paragraph.

(2) TERMINATION.—No loan shall be made under this subsection after September 30, 2004.

(g) EFFECTIVE DATE.—The amendments made this section shall apply to loans and grants made, and other assistance provided, after the date of the enactment of this Act.

SEC. 208. GOVERNMENT CONTRACT AND BUSINESS DEVELOPMENT ASSISTANCE FOR SMALL BUSINESS CONCERNS, ETC.

(a) IN GENERAL.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended by striking subsections (a), (b), and (c) and inserting the following new subsections:

"(a) GOVERNMENT CONTRACT AND BUSINESS DEVELOPMENT ASSISTANCE FOR SMALL BUSINESS CONCERNS.—

"(1) ESTABLISHMENT.—There is within the Administration a program to be carried out by the Administrator to enhance the competitive viability of program participants by providing Government contract and business development assistance to program participants consistent with the requirements of this section.

"(2)(A) CONTRACT AUTHORITY.—The Administrator shall, to the extent that Administrator determines it to be necessary or appropriate, enter into any con-

tract with any contracting officer obligating the Administrator to furnish goods or service to the Government.

"(B) NEGOTIATION WITH CONTRACTING OFFICER.—In any case in which the Administrator certifies to a contracting officer that the Administrator is competent and responsible to perform any procurement contract to be let by such officer, such officer may let such procurement contract to the Administrator upon such terms and conditions as may be agreed upon between the Administrator and such officer.

"(C) FAIR MARKET PRICE RESTRICTION.—A contracting officer shall not let a contract for goods or services under this paragraph if the amount of such contract exceeds the fair market price of such goods or services.

"(D) APPEAL OF CONTRACTING OFFICER DECISION.—(i) Whenever the Administrator and a contracting officer fail to agree, the matter shall be submitted for determination by the Administrator to the head of the agency of the contracting officer.

"(ii) Not later than 5 days from the date the Administrator is notified of a contracting officer's adverse decision, the Administrator may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with head of the agency.

"(iii) For purposes of this subparagraph, a contracting officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection.

"(iv) Upon receipt of the notice of intent to appeal, the head of the agency shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such agency head, unless the head of the agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision.

"(v) If the Administrator's request for reconsideration is denied, the head of the agency shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement.

"(E) DETERMINATION OF UNSUITABILITY.—If a contracting officer requests the Administrator to make the certification described in subparagraph (B) with respect to any contract that the Administrator determines is not suitable for award under this subsection, the Administrator shall notify the contracting officer of the Administrator's determination not later than 3 days after the date of such request.

"(F) SUBCONTRACTING AUTHORITY.—(i) The Administrator shall, to the extent that the Administrator determines it to be necessary or appropriate, arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to program participants for such goods or services as may be necessary to enable the Administrator to perform such contracts.

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

"(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal organization, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

"(III) Any joint venture established under the authority of section 602(b) of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656) shall be eligible for award of a contract pursuant to this section.

"(G) DELEGATION OF CONTRACT ADMINISTRATION.—(i) The Administrator and the head of the agency making the procurement shall enter into an agreement under which a subcontract awarded under this subsection shall be administered by the head of the agency making the procurement.

"(ii) Notwithstanding clause (i), the Administrator shall negotiate and award any such subcontract and shall assist the program participant in the settlement of any dispute arising from the performance of such subcontract.

"(iii) Any agreement entered into by the Administrator with the head of another agency before the date of the enactment of this clause that allows such agency head to negotiate or award a contract under this subsection shall not apply with respect to any subcontract offered for award after such date.

"(H) AWARD AFTER GRADUATION.—The Administrator shall, to the extent that the Administrator determines it to be necessary or appropriate, make an award to a small business concern which has completed its period of program participation as described in paragraph (21)(F) if—

"(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (H); and

"(ii) the prospective contract awardee was a program participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation.

"(I) AWARD THROUGH COMPETITION.—(i) A subcontract offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to program participants if—

"(I) there is a reasonable expectation that at least 2 program participants will submit offers and that award can be made at a fair market price; and

"(II) the estimated anticipated award price of the contract (including options) may exceed $5,000,000 in the case of a contract opportunity assigned a North American Industrial Classification System code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

"(ii) The Administrator may award a subcontract under this subsection on the basis of a competition restricted to program participants if the requirements of clause (i)(I) are met.

"(J) SOLE SOURCE AWARD.—(i) In the case of any subcontract not awarded under subparagraph (I), the Administrator shall award such contract sole source to a program participant if—

"(I) the program participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

"(II) the award of such contract would be consistent with the program participant's business plan; and

"(III) the award of the contract would not result in the program participant exceeding the requirements established by paragraph (21)(G)(iii).

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

"(3) SURETY BONDS.—Notwithstanding subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), no program participant shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if—

"(A) the Administrator determines that such amount is inappropriate for such program participant in performing such contract;

"(B) the Administrator takes such measures as the Administrator considers appropriate for the protection of persons furnishing materials and labor to a program participant receiving any benefit pursuant to this paragraph;

"(C) the Administrator assists, insofar as practicable, a program participant receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administrator may subsequently require for the successful completion of any program conducted under the authority of this subsection;

"(D) the Administrator finds that such program participant is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of title IV of the Small Business Investment Act of 1958; and

"(E) the program participant is determined to be a startup concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

"(4) SOLE SOURCE CONTRACT NEGOTIATION.—(A) Any program participant selected by the Administrator to perform a contract to be let noncompetitively

pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

"(B) CALCULATION OF FAIR MARKET PRICE.—(i) For purposes of paragraph (2)(C), a fair market price shall be determined by the agency according to clauses (ii) and (iii) and submitted along with the procurement requirement to the Administrator. The submission also shall include any data used by the agency in calculating the fair market price.

"(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis taking into account prevailing market conditions, commercial prices for similar goods or services, and data from other Federal agencies. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administrator.

"(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

"(iv) The agency's estimate of the current fair market price (and any supporting data furnished to the Administrator) shall not be disclosed to any potential offeror (other than the Administrator).

"(C) A program participant selected by the Administrator to perform or negotiate a contract to be let pursuant to this subsection may request the Administrator to protect the agency's estimate of the fair market price for such contract pursuant to paragraph (2)(A).

"(5) SOCIAL DISADVANTAGE.—(A) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

"(B) Any determination made pursuant to this paragraph shall be made by the Administrator and shall not be delegated.

"(6) ECONOMIC DISADVANTAGE.—(A)(i) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

"(ii) In determining the degree of diminished credit and capital opportunities the Administrator shall consider the assets and net worth of such socially disadvantaged individual as it relates to—

"(I) the assets and net worth of a business owner who is not socially disadvantaged; and

"(II) the capital needs of the primary industry in which the owner of the business is engaged.

"(iii) In determining the economic disadvantage of an Indian tribe, the Administrator shall consider, where available, information such as the following——

"(I) the per capita income of members of the tribe excluding judgment awards;

"(II) the percentage of the local Indian population below the poverty level; and

"(III) the tribe's access to capital markets.

"(B) For the purpose of this section, an individual who has been determined by the Administrator to be economically disadvantaged at the time of program entry shall be deemed to be economically disadvantaged for the term of the program, as computed under paragraph (21).

"(C) Whenever the Administrator computes personal net worth for the purpose of program entry, it shall exclude from such computation—

"(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons; and

"(ii) the equity that disadvantaged owners have in their primary personal residences.

"(D) The Administrator shall not establish a maximum net worth that prohibits program entry that is less than $750,000.

"(7) PROGRAM PARTICIPANT.—

"(A) DEFINITION.—For purposes of this section, the term 'program participant' means a small business concern which is certified by the Administrator that it meets the requirements of subparagraph (B) and—

"(i) which is at least 51 percent unconditionally owned by—

"(I) one or more socially and, at the time of program entry, economically disadvantaged individuals,

"(II) an economically disadvantaged Indian tribe, (or a wholly owned business entity of such tribe), or

"(III) an economically disadvantaged Native Hawaiian organization, or

"(ii) in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by—

"(I) one or more socially and, at the time of program entry, economically disadvantaged individuals,

"(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

"(III) an economically disadvantaged Native Hawaiian organization.

"(B) PROGRAM PARTICIPATION ELIGIBILITY.—A program participant meets the requirements of this subparagraph if the management and daily business operations of such small concern are controlled by one or more—

"(i) socially and, at the time of program entry, economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

"(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

"(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

"(C) NATIVE HAWAIIAN ORGANIZATION.—For purposes of this subsection, the term 'Native Hawaiian Organization' means any community service organization serving Native Hawaiians in the State of Hawaii which—

"(i) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

"(ii) is controlled by Native Hawaiians, and

"(iii) whose business activities will principally benefit such Native Hawaiians.

"(D) ANNUAL CERTIFICATION.—Each program participant shall certify to the District Director for the district in which its principal place of business is located, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control by socially disadvantaged individuals.

"(E) CAPABILITY DETERMINATION.—The term 'program participant' shall not include any concern unless the Administrator determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (2)(F) and has reasonable prospects for success in competing in the private sector.

"(F) SPECIAL RULES ON ELIGIBILITY.—(i) Except as provided in clause (iii), no individual who was determined pursuant to this section to be socially and economically disadvantaged before the date of the enactment of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such date.

"(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to paragraph (5) shall be permitted to assert such eligibility for only one small business concern.

"(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to this subsection if—

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

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

"(iv) No program participant, previously eligible for the award of contracts pursuant to this subsection, shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10).

"(v)(I) A program participant eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership or control of the program participant that does not alter the eligibility of the program participant as determined by paragraphs (5), (6), and (7).

"(II) The program participant shall notify the Assistant Administrator for Minority Small Business and Capital Ownership of any such change in control or ownership and provide the Assistant Administrator with sufficient information to enable the Assistant Administrator to determine that the transfer of ownership and control does not alter eligibility for participation in the program.

"(III) In the event of such a alteration of ownership or control, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (27).

"(8) MANAGEMENT RESTRICTIONS.—(A) The Administrator shall not restrict the amount of money that may be removed from the program participants by its owners.

"(B) The Administrator shall not impose any restrictions on the management of the company except insofar as such management would violate other eligibility provisions or Federal procurement law.

"(C) Notwithstanding this provision, the Administrator may determine that a program participant is not capable of performing a specific contract and may choose not to award a contract to a program participant.

"(9) EXPANSION INTO OTHER INDUSTRIES.—Limitations established by the Administrator in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of North American Industry Classification System codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a program participant into areas of industrial endeavor where such concern has the potential for success.

"(10) OPPORTUNITY FOR HEARING.—(A) Subject to the provisions of subparagraph (E), the Administrator, prior to taking any action described in subparagraph (B), shall provide the program participant that is the subject of such action, an opportunity for a hearing on the record after providing written notification of an action set forth in paragraph (B), in accordance with chapter 5 of title 5, United States Code.

"(B) The actions referred to in subparagraph (A) are—

"(i) denial of program admission based upon a negative determination pursuant to paragraph (5), (6), or (7);

"(ii) a termination pursuant to paragraph (21)(D);

"(iii) a graduation pursuant to paragraph (21)(F); and

"(iv) the denial of a request to issue a waiver pursuant to paragraph (20)(B).

"(C) The Administrator's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless the decision is not supported by substantial evidence in the record.

"(D) A decision rendered pursuant to this paragraph shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

"(E) The hearing officer selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

"(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administrator's position;

"(ii) is untimely filed;

"(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

"(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

"(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within 90 days after a written notification of the Administrator taking an action pursuant to subparagraph (B).

"(11) OUTREACH EFFORT.—(A) The Administrator shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

"(B) Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas

and within States having relatively few program participants and from potentially eligible program participants in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

"(12) CONSTRUCTION CONTRACTS.—To the maximum extent practicable, construction subcontracts awarded by the Administrator pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

"(13) CAPABILITY STATEMENT.—

"(A) IN GENERAL.—The Administrator shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administrator a capability statement.

"(B) CONTENTS.—Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the business opportunity specialist in the district to which the program participant is assigned.

"(C) CLASSIFICATION.—The Administrator shall separate such statements by those program participants primarily dependent upon local contract support and those primarily requiring a national marketing effort.

"(D) DISSEMINATION.—Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities within such agencies that may purchase the types of items or services described on the capability statements.

"(E) CONTRACTING ACTIVITY COMMUNICATION WITH ADMINISTRATION.—Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant business opportunity specialist to indicate the number, type and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for contracting with the Administrator and subsequent subcontracting to those concerns for which it has received capability statements.

"(14) CONTRACT FORECAST.—(A) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify the following:

"(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

"(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

"(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

"(iv) The activity responsible for the award and administration of the contract.

"(B) FORECAST DISSEMINATION.—The head of each executive agency subject to the provisions of subparagraph (A) shall within 10 days of completion furnish such forecasts to the Administrator and the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) of this Act for such agency.

"(C) LIMITS ON DISSEMINATION.—The information reported pursuant to subparagraph (B) may be limited to classes of items and services for which there are substantial annual purchases.

"(D) FORECAST AVAILABILITY.—Such forecasts shall be available to program participants and all other small business concerns.

"(15) PERCENTAGES OF CONTRACT PERFORMANCE BY PROGRAM PARTICIPANTS.—

"(A) SERVICES AND PROCUREMENT.—A program participant may not be awarded a contract under this subsection unless the program participant agrees that—

"(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

"(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will

perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

"(B) ALTERATION OF PERCENTAGES.—The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard established by the Administrator pursuant to section 3(a) of this Act for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 15(n) of this Act.

"(C) CONSTRUCTION CONTRACT REGULATIONS.—(i) The Administrator shall establish, by regulation and after the opportunity for notice and comment, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph.

"(ii) The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 15(n) of this Act for the same industry category.

"(16) PERFORMANCE EXCEPTION FOR WHOLESALERS AND RETAILERS.—(A) An otherwise responsible program participant that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or section 15(a) solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

"(B) To be in compliance with the requirements referred to in subparagraph (A), the program participant shall—

"(i) be primarily engaged in the wholesale or retail trade;

"(ii) be a small business concern under the size standard for the North American Industrial Classification System Code assigned to the contract solicitation on which the offer is being made;

"(iii) be a regular dealer, as defined pursuant to section 1(a) of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (popularly known as the 'Walsh-Healey Act'; 41 U.S.C. 35(a)), in the product to be offered the Government or be specifically exempted from such section by paragraph (24)(C) of this subsection; and

"(iv) represent that it will supply the product of a small manufacturer as defined in section 3 of this Act, unless a waiver of such requirement is granted—

"(I) by the Administrator, after reviewing a determination by the contracting officer that no small manufacturer can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

"(II) by the Administrator for a product (or class of products), after determining that no small manufacturer is available to participate in the Federal procurement market.

"(17) RESTRICTION ON ADMINISTRATION EMPLOYEES.—

"(A) IN GENERAL.—No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any program participant if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such program participant or with respect to the administration of any assistance provided to program participants generally under this subsection, section 8(b), or section 7(a)(20).

"(B) PROHIBITED TRANSACTIONS.—The activities and transactions prohibited by subparagraph (A) include—

"(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

"(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

"(iii) the receipt of any other benefit or right that may be an incident of ownership.

"(C) EMPLOYEE CERTIFICATION AND PENALTIES.—(i) The employees designated in clause (ii) shall annually submit a written certification to the Administrator regarding compliance with the requirements of this paragraph.

"(ii) The employees referred to in clause (i) are—

"(I) regional administrators;

"(II) district directors;

"(III) the Assistant Administrator for Minority Small Business and Capital Ownership Development;

"(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 8(b); and

"(V) such other employees as the Administrator may designate.

"(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 percent of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

"(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

"(18) PROHIBITION ON POLITICAL ACTIVITY.—

"(A) IN GENERAL.—Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 8(b), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

"(B) PENALTIES.—Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action which may consist of separation from service, reduction in grade, suspension, or reprimand.

"(C) EXCEPTION.—Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

"(D) OTHER LAWS NOT AFFECTED.—The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

"(19) ANNUAL REPORT TO BUSINESS OPPORTUNITY SPECIALIST.—

"(A) IN GENERAL.—Program participants shall semiannually report to their assigned business opportunity specialist the following:

"(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such program participant.

"(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

"(B) SUBMISSIONS TO PRINCIPAL OFFICE.—The business opportunity specialist shall promptly review and forward such report to the Assistant Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

"(C) CAUSE FOR TERMINATION.—The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered good cause for the initiation of a termination proceeding pursuant to paragraph (21)(D) of this section.

"(20) EFFECT OF CHANGE OF OWNERSHIP AND CONTROL.—

"(A) IN GENERAL.—

"(i) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed (as performance is defined in paragraphs (15) and (16)) by the program participant that initially received such contract.

"(ii) Notwithstanding the provisions of clause (i), if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership

or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

"(B) WAIVER.—The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

"(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

"(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions.

"(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award pursuant to this subsection.

"(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death.

"(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

"(I) such concern has exited the program established under this subsection;

"(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

"(III) the disadvantaged owners will maintain control of daily business operations.

"(C) TIMING OF WAIVER REQUEST.—The Administrator may waive the requirements of subparagraph (A) if—

"(i) in the case of subparagraphs (B)(i), (ii), and (iii), he is requested to do so prior to the actual relinquishment of ownership or control; and

"(ii) in the case of subparagraph (B)(iv), he is requested to do so as soon as possible after the incapacity or death occurs.

"(D) NOTIFICATION TO ADMINISTRATOR.—Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

"(E) TREATMENT OF SMALL BUSINESS INVESTMENT COMPANY INTEREST.—Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

"(21) CONDITIONS OF PARTICIPATION.—

"(A) DURATION.—A program participant shall be permitted to continue participation in such program for a period of time which is 9 years. Nothing contained in this subparagraph shall be deemed to prevent the Administrator from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

"(B) BUSINESS PLAN SUBMISSION.—(i) Promptly after certification as a participant in the program established by this section, a program participant shall submit a business plan (hereinafter referred to as the 'plan') as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such program participant.

"(ii) The plan may be a revision of a preliminary business plan submitted by the program participant or required by the Administrator as a part of the application for certification under this subsection and shall be designed to result in the program participant eliminating the conditions or circumstances upon which the Administrator determined eligibility pursuant to paragraph (7) of this section.

"(iii) Such plan, and subsequent modifications submitted under clause (v), shall be approved by the Business Opportunity Specialist prior to the program participant being eligible for award of a contract pursuant to this subsection.

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

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

"(II) An analysis of the program participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the program participant from receiving contracts other than those awarded under this section.

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

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

"(V) Estimates of contract awards pursuant to this subsection and from other sources, which the program participant will require to meet the specific targets, objectives, and goals for the years covered by its plan.

"(v) Each program participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the District Director for approval. The currently approved plan shall be considered valid until such time as a modified plan is reviewed by the Business Opportunity Specialist and approved by the District Director.

"(vi) Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such program participant has complied with the requirements of paragraph (21)(G) of this section relating to attaining business activity from sources other than contracts awarded pursuant to this section.

"(vii) Each program participant shall annually forecast its needs for contract awards under this section for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (v). Such forecast shall be known as the 'section 8(a) contract support level' and shall be included in the program participant's business plan. Such forecast shall include—

"(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under this section, reflecting compliance with the requirements of paragraph (21)(G) relating to attaining business activity from sources other than contracts awarded pursuant to this section,

"(II) the types of contract opportunities being sought, identified by North American Industrial Classification System Code or otherwise,

"(III) an estimate of the dollar value of the section 8(a) contract support level to be sought on a competitive basis, and

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

"(C) CONDITIONS FOR DENIAL OF ASSISTANCE.—A program participant shall be denied all such assistance if such concern—

"(i) voluntarily elects not to continue participation;

"(ii) completes the period of Program participation as prescribed by paragraph (21)(A); and

"(iii) is terminated or graduated pursuant to proceedings conducted in accordance with paragraph (10).

"(D) TERMINATION DEFINED.—For purposes of this subsection, the term 'terminated' and the term 'termination' means the total denial or suspension of assistance under this paragraph or under this section prior to the graduation of the program participant or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including—

"(i) the failure by such concern to maintain its eligibility for program participation;

"(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delin-

quent performance or terminations for default with respect to contracts awarded under the authority of this subsection;

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

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

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

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

"(E) INITIATION OF TERMINATION PROCEEDING.—(i) The District Director may initiate a termination proceeding by recommending such action to the Assistant Administrator for Minority Small Business and Capital Ownership Development.

"(ii) Whenever the Assistant Administrator determines such termination is appropriate, within 15 days after making such a determination the program participant shall be provided a written notice of intent to terminate, specifying the reasons for such action.

"(iii) No program participant shall be terminated from the program pursuant to subparagraph (D) without first being afforded an opportunity for a hearing in accordance with paragraph (10).

"(iv) If a termination proceeding is initiated against a program participant, such participant shall be ineligible from receiving assistance pursuant to this section until the final disposition of the termination action.

"(v) If the program participant is reinstated upon final decision by the Administrator pursuant to paragraph (10), the time during which the program participant did not receive assistance shall be added on to the original program term end date.

"(F) GRADUATION DEFINED.—For the purposes of this subsection and subsection 8(b) the term 'graduated' or 'graduation' means that the program participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section.

"(G) BUSINESS ACTIVITY TARGETS.—(i) During the developmental stage of its participation in the program, a program participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to this subsection (hereinafter referred to as 'business activity targets.').

"(ii) Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administrator that the program participant will engage in a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

"(iii) During the transitional stage of the program a program participant shall be subject to regulations regarding business activity targets that are promulgated by the Administrator. Such regulations shall:

"(I) Establish business activity targets applicable to program participants during the fifth year and each succeeding year of program participation.

"(aa) Such activity targets shall, for such period of time, reflect a reasonably consistent increase in contracts awarded other than pursuant to this subsection, expressed as a percentage of total sales.

"(bb) The Administrator may establish modified business activity targets for program participants that have participated in the program for a period of longer than 5 years on the date of the enactment of this Act.

"(II) Require the program participant to certify that it has met its business activity targets or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued

under subclause (III) prior to the receipt of any contract awarded pursuant to this subsection.

"(III) Authorize the Administrator to take appropriate remedial measures with respect to a program participant that has failed to attain a required business activity target for the purpose of reducing such participant's dependence on contracts awarded pursuant to this section.

"(aa) Such remedial actions may include assisting the program participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the program participant pursuant to this subsection.

"(bb) Unless the remedial measures taken pursuant to subclause (aa) bar the award of contracts to program participants, no remedial measures shall be reviewable pursuant to paragraph (10).

"(H) ELIGIBILITY REVIEW.—(i) The Administrator shall conduct an evaluation of a program participant's eligibility for continued participation in the program whenever it receives specific and credible information alleging that such program participant no longer meets the requirements for program eligibility.

"(ii) Upon making a finding that a program participant is no longer eligible, the Administrator shall initiate a termination proceeding in accordance with subparagraphs (D) and (E).

"(iii) A program participant's eligibility for award of any contract under the authority of this section may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

"(22) CERTIFICATION AND REVIEW BY ADMINISTRATOR.—

"(A) ASSISTANT ADMINISTRATOR COORDINATION.—The Assistant Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and program participants.

"(B) DIVISION OF PROGRAM CERTIFICATION AND ELIGIBILITY.—(i) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the 'Division') in the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Assistant Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

"(ii) Subject to the provisions of paragraph (5)(B), the functions and responsibility of the Division of Program Certification and Eligibility are to—

"(I) receive, review and evaluate applications for certification pursuant to paragraphs (5), (6), and (7);

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

"(III) render recommendations on such applications to the Assistant Administrator for Minority Small Business and Capital Ownership Development;

"(IV) review and evaluate financial statements and other submissions from concerns participating in the program established by this subsection to ascertain continued eligibility to receive subcontracts pursuant to this section;

"(V) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Assistant Administrator for Minority Small Business and Capital Ownership Development;

"(VI) make recommendations to the Assistant Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

"(VII) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d), or any other provision of Federal law that references such subsection for a definition of program eligibility; and

"(VIII) implement such policy directives as may be issued by the Assistant Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (E) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

"(C) PROGRAM ADMISSION AND CONTRACT OPPORTUNITIES.—An applicant shall not be denied admission into the program established by this subsection due solely to a determination by the Division of Program Certification and Eligibility that specific contract opportunities are unavailable to assist in the development of such concern unless—

"(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern on a prime contract basis; or

"(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar items or services.

"(D) CERTIFICATION DECISION.—Except as provided in paragraph 5(B), not later than 90 days after receipt of a completed application for program certification, the Assistant Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a program participant or shall deny such application.

"(E) DIVISION REVIEW.—

"(i) Thirty days before the conclusion of each fiscal year, the Director of the Division of Program Certification and Eligibility shall review all concerns that have been admitted into the program during the preceding 12-month period.

"(ii) The review shall ascertain the number of entrants, their geographic distribution, and their industrial classification. The Director shall also estimate the expected growth of the program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the program.

"(iii) The findings and conclusions of the Director shall be reported to the Assistant Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year.

"(iv) Based on such report and such additional data as may be relevant, the Assistant Administrator shall, by October 31 of each year, issue rules as that term is defined in section 551(4) of title 5, United States Code, applicable to such fiscal year that—

"(I) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

"(II) assign staffing levels and allocate other program resources as necessary to meet program needs; and

"(III) establish priorities in the processing and admission of new program participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administrator shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

"(23) STAGES OF PROGRAM PARTICIPATION.—

"(A) IN GENERAL.—The Capital ownership Development Program established by this subsection shall have a developmental stage and transitional stage.

"(B) DEVELOPMENTAL STAGE.—The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

"(C) TRANSITIONAL STAGE.—The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

"(24) TYPES OF ASSISTANCE PROVIDED BY THE ADMINISTRATOR.—The Administrator shall make available during the developmental and transitional stages the following assistance:

"(A) Contract support pursuant to this section.

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

"(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled 'An Act to provide conditions for the purchase of supplies

and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (popularly known as the 'Walsh-Healey Act'; 41 U.S.C. 35(a)), which exemptions shall apply only to contracts awarded pursuant to this section and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000.

"(D)(i) Financial assistance whereby the Administrator may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns.

"(ii) For purposes of this subparagraph the term 'training provider' shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998.

"(iii) Assistance may be made by direct payment to the training provider or by reimbursing the program participant or the participant's employee, if such reimbursement is found to be reasonable and appropriate.

"(iv) The Administrator shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort.

"(v) No financial assistance shall be granted under this subparagraph unless the Administrator determines each of the following:

"(I) The program participant has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development.

"(II) No more than 5 employees or potential employees of the program participant are recipients of any benefits under this subparagraph at any one time.

"(III) No more than $2,500 shall be made available for any one employee or potential employee.

"(IV) The length of training or upgrading financed by this subparagraph shall be no less than 1 month nor more than 6 months.

"(V) The program participant has given adequate assurance it will employ the trainee or upgraded employee for at least 6 months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period.

"(aa) If such concern, trainee, or upgraded employee breaches this agreement, the Administrator shall be entitled to obtain from the violating party the repayment of all funds expended on behalf of the violating party.

"(bb) Such repayment shall be made to the Administrator together with such interest and costs of collection as may be reasonable.

"(cc) The violating party shall be barred from receiving any further assistance under this subparagraph.

"(VI) The training to be financed may take place either at such concern's facilities or at those of the training provider.

"(VII) The program participant will maintain such records as the Administrator deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

"(E)(i) The transfer of technology or surplus property owned by the United States to such a concern.

"(ii) Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to program participants on a priority basis.

"(iii) Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the program and for one year thereafter.

"(F) Training assistance whereby the Administrator shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under this section in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

"(G) Joint ventures, leader-follow arrangements, and teaming agreements between the program participant and other program participants and other small business concerns with respect to contracting opportunities. Such activities shall be undertaken on the basis of programs developed by the procuring agency with the assistance of the Administration.

"(H) Transitional management business planning training and technical assistance.

"(25) TRANSITIONAL STAGE ASSISTANCE.—Program participants in the developmental stage of program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G) of paragraph (24).

"(26) DEVELOPMENTAL STAGE ASSISTANCE.—Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), and (H) of paragraph (24).

"(27) DURATION OF STAGES.—Subject to the provisions of paragraph (21)(A), a program participant may receive developmental assistance under this subsection and contracts under this subsection for a total period of not longer than 9 years, measured from the date of its certification under this subsection, of which—

"(A) no more than 5 years may be spent in the developmental stage of program participation; and

"(B) no more than 4 years may be spent in the transitional stage of program participation.

"(28) DATA COLLECTION.—

"(A) IN GENERAL.—The Administrator shall develop and implement a process for the systematic collection of data on the operations of the program established pursuant to this section.

"(B) REPORT.—Not later than April 30 of each year, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the program that shall include the following:

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

"(ii) A compilation and evaluation of those business concerns that have exited the program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals.

"(iii) For those businesses that have continued operations after they exited from the program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

"(iv) A listing of all participants in the program during the preceding fiscal year identifying, by State and by region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under this section, and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (25) and (26) and section 7(a)(20) during such year.

"(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to this section and such amount expressed as a percentage of total sales of—

"(I) all firms participating in the program during such year; and

"(II) firms in each of the nine years of program participation.

"(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next 2-year period to service the expected portfolio of firms certified pursuant to this section.

"(vii) The total dollar value of contracts and options awarded pursuant to this section, at such dollar increments as the Administrator deems appropriate, for each 6 digit North American Industrial Classification System code under which such contracts and options were classified.

"(b) MANAGEMENT AND TECHNICAL ASSISTANCE.—

"(1) CONTRACTS FOR ASSISTANCE.—The Administrator shall be required to enter into contracts with business concerns, not-for-profit entities, and other persons capable of providing management and technical assistance, as may be necessary, to participants in the program established in subsection (a), to firms described in paragraph (5) or paragraph (6) of that subsection but are not participants in the program established pursuant to that subsection, and to small business concerns which have loans guaranteed pursuant to section 7(i).

"(2) SELECTION OF CONTRACTORS.—The Administrator shall select contractors based on the experience in advising small business concerns on financial and business operations, including but not limited to comprehensive business plans, and other functions needed to preserve and expand small businesses eligible for assistance under paragraph (1). To the extent practical, the Administrator shall select, as contractors, small business concerns but the primary evaluation criteria shall be the technical ability of the contractor to provide the services set forth in this subsection.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $6,000,000 for each of fiscal years 2004 and 2005. Such sums shall remain available until expended.

"(c) COORDINATION WITH OTHER AGENCIES.—The Administrator shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of Federal agencies to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of subsection (a) of this section and section 7(i).".

(b) COMMERCIAL MARKETING.—Section 8(d)(10) of the Small Business Act (15 U.S.C. 637(d)(10)) is amended to read as follows:

"(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administrator is authorized to—

"(A) assign at least one commercial marketing representative per state whose primary responsibilities shall be to—

"(i) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

"(ii) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small manufacturers, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns eligible for participation under section 8(a), and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency;

"(iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts, on an aggregate basis including recommendations to the contracting officer for an assessment of liquidated damages;

"(iv) work directly with small businesses to counsel them on marketing and subcontracting to large business prime contractors that have contracts with the Federal Government;

"(v) identify large business buyers of small business products and services;

"(vi) assist small businesses in receiving timely payment from large business prime contractors that have contracts with the Federal Government; and

"(vii) perform program reviews of the small business outreach programs and subcontracting programs of large businesses.

"(B) Not later than September 30, 2004, each state shall be assigned at least one commercial marketing representative, authorized by paragraph 10(A) of this section, who must be physically located in each state.

"(C) Not later than 120 days after enactment of this Act, the Administrator shall, after the opportunity for notice and comment, promulgate regulations governing the Administrator's review of subcontracting plans including the standards for determining good faith effort of compliance with the subcontracting plans.".

(c) WOMEN-OWNED SMALL BUSINESS CONCERNS; AUTHORITIES OF ADMINISTRATOR.—Subsections (m) and (n) of section 8 of the Small Business Act (15 U.S.C. 637 (m) and (n)) are amended to read as follows:

"(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

"(1) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term 'small business concern owned and controlled by women' has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

"(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

"(A) each of the concerns is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

"(B) the contracting officer has a reasonable expectation that 2 or more small business concerns owned and controlled by women will submit offers for the contract;

"(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (4);

"(D) the anticipated award price of the contract (including options) does not exceed—

"(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

"(ii) $3,000,000, in the case of all other contracts;

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

"(F) each of the concerns—

"(i) is certified by a Federal agency or a State government as a small business concern owned and controlled by women;

"(ii) is certified by a national certifying entity approved by the Administrator as a small business concern owned and controlled by women; or

"(iii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation in accordance with standards established by the Administration to support such certification.

"(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

"(4) IDENTIFICATION OF INDUSTRIES.—

"(A) IN GENERAL.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

"(B) DETERMINATION BY CONTRACTING OFFICER.—Until such time as the Administrator conducts such study, the determination as to whether an industry is under-represented by small business concerns owned and controlled by women shall be made by the contracting officer.

"(C) DEADLINE.—Not later than 90 days after the date of the enactment of this subparagraph the Administrator shall—

"(i) ensure the completion of the study described in this paragraph;

"(ii) approve national certifying entities for the purposes of paragraph (2)(F)(ii); and

"(iii) make determinations in accordance with paragraph (3).

"(5) ENFORCEMENT; PENALTIES.—

"(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall use existing procedures established by the Office of Hearings and Appeals relating to—

"(i) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or infor-

mation provided to the Administration by a small business concern under paragraph (2)(F)); and

"(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

"(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(F).

"(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

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

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

"(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

"(n) AUTHORITIES OF ADMINISTRATOR.—In carrying out its functions under subsections 7(i), 8(a), and 8(b) of this Act the Administrator may do the following:

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

"(2) Accept voluntary and uncompensated services, notwithstanding section 1342 of title 31, United States Code.

"(3) Employ experts and consultants or organizations pursuant to the authority in section 6(h). No individual may be employed under the authority of this paragraph for more than 100 days in any fiscal year. No individual employed under this paragraph may be compensated at rates in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime. Individuals employed under this paragraph may be allowed, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code for persons in the Government service employed intermittently. Contracts for employment under this paragraph may be renewed annually.".

(d) CLERICAL AMENDMENT.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended by striking "SEC. 8." inserting the following:

"SEC. 8. GOVERNMENT CONTRACT AND BUSINESS DEVELOPMENT ASSISTANCE FOR SMALL BUSINESS CONCERNS, ETC.".

SEC. 209. TRAINING AND ASSISTANCE.

Section 12 of the Small Business Act (15 U.S.C. 641) is amended to read as follows:

"SEC. 12. TRAINING AND ASSISTANCE.

"(a) ASSISTANCE.—The Administrator shall (through co-sponsorships, small business development centers, women's business centers, the Office of Veterans Affairs, and other programs as the Administrator determines appropriate) provide technical and managerial assistance, advice and guidance on matters of government procurement (at the Federal, State, and local levels) and information on the policies, practices, and principles of good management, and, when appropriate, distribute publications and other material on Administration programs to small business concerns, including all categories of such concerns defined in section 3 of this Act.

"(b) VOLUNTEERS.—

"(1) The Administrator shall recruit executive volunteers to assist the Administrator in carrying out this section.

"(2) The Administrator shall recruit retired and active executives to form the Service Corps of Retired Executives and the Active Corps of Executives. Such executives will be responsible for providing technical and managerial assistance and advice to small business concerns.

"(3) The Administrator shall recruit retired and active executives from large and small manufacturers to form the Service Corps of Retired Manufacturing Executives and the Active Corps of Manufacturing Executives. Such executives will advise, assist, and train small manufacturers.

"(4) The Administrator may enter into appropriate contracts, grants, or cooperative agreements with the volunteers or corps referred to in this subsection in order to provide the services set forth in this section.

"(5) The Administrator may maintain the headquarters of the corps referred to in this subsection and assign, at his discretion, Administration personnel to assist the volunteers.

"(6) The volunteers may solicit cash, other personal property, and in-kind contributions from the private sector to be used to carry out their functions under this section. The volunteers may use payments from the Administrator made pursuant to this subsection to assist in such solicitations.

"(7) The Administrator may permit any individual or group of persons participating in the programs established pursuant to this subsection to use any facilities of the Administration, including regional and district offices, as well as clerical and computer services.

"(8) The volunteers, while carrying out the purposes of this section, shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–11 employee.

"(9) The Administrator may reimburse the volunteers for all necessary out-of-pocket expenses incident to their provision of services under this section, or in connection with attendance at meetings sponsored by the Administrator, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay.

"(10) None of the services made available by volunteers pursuant to this subsection shall be made available to any person or small business concern who is delinquent on a loan made pursuant to section 7 of this Act or Title V of the Small Business Investment Act of 1958 unless such assistance relates solely to addressing the matter of the delinquency and a specific request is made in writing to the volunteer (and a record of such communication is maintained by the volunteer).

"(11) No payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this subsection shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

"(12) Under regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this subsection to which volunteers have been made parties.

"(c) SMALL BUSINESS INSTITUTES.—In carrying out its functions under this section, the Administrator may make grants (including contracts or cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities. To the extent practicable, the Administrator shall select applicants that demonstrate the best capability of serving small manufacturers.

"(d) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—

"(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

"(A) to expand business-to-business relationships between large and small businesses by—

"(i) identifying opportunities for small business concerns located in areas of high unemployment or low income;

"(ii) assisting small business concerns and small manufacturers in finding opportunities to supply goods and services to other businesses,

particularly large businesses that have previously obtained such goods and services from businesses located outside of the United States; and

"(iii) providing such other assistance as the Administrator may identify;

"(B) to maintain a database, to the extent practicable, of supply chain management opportunities for small business concerns and small manufacturers;

"(C) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs; and

"(D) by providing businesses with information on the best practices used by other business concerns in establishing mentor-protege or other business development programs and not limited solely to procurement by Federal, State, or local governments.

"(2) MATCHING REQUIREMENT.—The Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1) an amount, either in kind or in cash, equal to the grant amount.

"(3) DEFINITIONS.—For purposes of this subsection, the term 'supply chain' means a network of facilities and distribution options that performs the functions of procurement of materials, transformation of these materials into intermediate and furnished products, and distribution of the finished products to customers.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000, to remain available until expended, for each of fiscal years 2004 through 2005.".

SEC. 210. CONTRACTING ASSISTANCE; ETC.

(a) CERTAIN DISAGREEMENTS SUBMITTED TO OMB.—Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by striking the sentence beginning "Whenever the Administrator and the contracting procurement agency fail to agree," and inserting the following: "Whenever the Administration and the contracting procurement agency fail to agree, the Administrator shall submit the matter to the Director of the Office of Management and Budget, who shall render his decision regarding the matter not later than 10 days after receiving the matter. The Director may not delegate his duties under the preceding sentence except to a subordinate official within the Office of Management and Budget appointed by the President, by and with the advice and consent of the Senate.".

(b) PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS.—Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) is amended to read as follows:

"(c) PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS.—

"(1) As used in this subsection:

"(A) The term 'Committee' means the Committee for Purchase From People Who Are Blind or Severely Disabled established under the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46).

"(B) The term 'public or private organization for the disabled' means any organization—

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

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

"(iii) which in the production of commodities and in the provision of services during any fiscal year employs disabled individuals for not less than 75 percent of the man-hours required for the production or provision of the commodities or services.

"(C) The term 'disabled person' means any individual who—

"(i) is a service-disabled veteran; or

"(ii) has a disability (as defined in section 3 of the Americans with Disabilities Act of 1990) which limits such individual's selection of any type of employment for which such individual would otherwise be qualified or qualifiable.

"(2) The Administrator shall evaluate the placement of products on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled 'An Act to create a Committee on Purchases of Blind made Products, and

for other purposes', approved June 25, 1938 (41 U.S.C. 47) to determine the impact of such placement on for-profit small business concerns.

"(3) The Administrator shall monitor and evaluate the participation of public or private organizations for the disabled in Federal procurement contracts and shall annually report the results of such monitoring and evaluation to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than March 31st of each year. This report shall include the impact of such participation on for-profit small business concerns.

"(4)(A) Not later than 10 days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the disabled, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

"(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than 30 days after the filing of the appeal, the Administrator shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

"(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next highest bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administrator who shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

"(6) For the purposes of this subsection, a contract may be awarded only if at least 75 percent of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by disabled individuals.

"(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.".

(c) MINIMUM SOLICITATION PERIOD.—Section 15(e) of the Small Business Act (15 U.S.C. 644(e)) is amended by adding at the end the following new paragraph:

"(5) MINIMUM SOLICITATION PERIOD.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, small business concerns shall be allowed to submit offers for a period of not less than 60 days beginning on the date the solicitation is issued.".

(d) PROCUREMENT GOALS.—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended to read as follows:

"(g)(1) The President shall before the close of each fiscal year establish new Government-wide procurement goals for the following fiscal year for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The President shall not simply readopt the preceding years procurement goals. The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Government-wide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract awards. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract awards and not less than 5 percent of the total value of all subcontract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract awards and not less than 5 percent of the total value of all subcontract awards for

each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established by section 8(a) of this Act, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. The Administrator and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

"(2) The head of each Federal agency shall, after consultation with the Administrator, establish goals for the participation by small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women in procurement contracts of such agency having a value of $25,000 or more. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. Goals established under this subsection shall be jointly established by the Administrator and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women to perform subcontracts under such contracts. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. Whenever the Administrator and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination. For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a), small business concerns owned and controlled by women, and small manufacturers. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. The head of each Federal agency, in attempting to attain such participation, shall consider—

"(A) contracts awarded as the result of unrestricted competition; and

"(B) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).".

(e) REPORTS.—Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended to read as follows:

"(h)(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administrator on the extent of participation by small business concerns, small manufacturers, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically

disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. Additionally, such reports shall contain sufficient justification if goals established for the most recent fiscal year end were established lower than the same goals for the previous fiscal year.

"(2) The Administrator shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to the President and the Congress. The Administrator's submission to the President shall include the following:

"(A) The Government-wide goals for participation by small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women and the performance in attaining such goals.

"(B) The goals in effect for each agency and the agency's performance in attaining such goals.

"(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administrator) to achieve the goals in the succeeding fiscal year.

"(D) The number and dollar value of prime contracts awarded to small business concerns, small manufacturers small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act and small business concerns owned and controlled by women. For each agency and on a government-wide basis, number and dollar value of contracts issued through—

"(i) noncompetitive negotiation;

"(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

"(iii) competition restricted to small business concerns participating in the program established by section 8(a) of this Act;

"(iv) competition restricted to small business concerns; and

"(v) unrestricted competitions.

"(E) The number and dollar value of subcontracts awarded to small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women.

"(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).

"(4) For the purpose of this subsection, the term 'small disadvantaged business' means any small business concern that is certified as a 'small disadvantaged business' by the Administrator.".

(f) RESTRICTED COMPETITION.—Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended to read as follows:

"(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than $2,500 but not greater than $1,000,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

"(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

"(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $1,000,000 under the authority of section 8(a) of this Act, section 2323 of title 10, United States Code, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.".

(g) ASSIGNMENT OF PROCUREMENT CENTER REPRESENTATIVES.—Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended to read as follows:

"(l)(1) The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate. The procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6).

"(2) A procurement center representative is authorized to—

"(A) work directly with small businesses to counsel them on the Federal market and contracting with the Federal Government;

"(B) identify Federal agency buyers of small business products and services;

"(C) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

"(D) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

"(E) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

"(F) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;

"(G) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification; and

"(H) receive unsolicited engineering proposals and, when appropriate—

"(i) either—

"(I) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal; or

"(II) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

"(ii) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

"(3) A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

"(4) The Administrator shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

"(5)(A) The procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

"(i) full-time employees of the Administration; and

"(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

"(B) In addition to the requirements of subparagraph (A), each procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

"(C) The Administrator shall establish personnel positions for procurement representatives and advisers assigned pursuant to this subsection which are classified

at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

"(6) For purposes of this subsection, the term 'major procurement center' means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of other than commercial items and which has the potential to incur significant savings as the result of the placement of a procurement center representative.

"(7)(A) At such times as the Administrator deems appropriate, the procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

"(B) The procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within sixty calendar days after receipt, respond, in writing, to each recommendation made by such representative.".

(h) OTHER DUTIES OF ADMINISTRATOR.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by adding at the end the following new subsection:

"(q)(1) The Administrator shall obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small business concerns and small manufacturers at prices and on conditions and terms which are fair and equitable.

"(2) The Administrator shall determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated as small business concerns or small manufacturers for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a small business concern or small manufacturer in accordance with criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a small business concern or small manufacturer. Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated as small business concerns or small manufacturers, as authorized and directed under this paragraph.

"(3)(A) The Administration shall certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

"(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (popularly known as the 'Walsh-Healey Act'; 41 U.S.C. 35(a)), he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

"(C) In any case in which a small business concern or group of such concerns has been certified by the Administrator pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of re-

sponsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administrator may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

"(4) The Administrator shall obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act.

"(5) The Administrator shall obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act.

"(6) The Administrator shall obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources.

"(7) The Administrator shall make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business concerns, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns.

"(8) The Administrator shall consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies.".

(i) PRIORITY OF SMALL BUSINESS PROCUREMENT PREFERENCES.—Section 15 of the Small Business Act (15 U.S.C. 644) is further amended by adding at the end the following new subsection:

"(r) PRIORITY OF SMALL BUSINESS PROCUREMENT PREFERENCES.—

"(1) IN GENERAL.—A contracting officer may not make a procurement from a source on the basis of a preference provided under any provision of this Act referred to in paragraph (2) unless the contracting officer has determined that such procurement cannot be made on the basis of a preference provided under another provision of this Act with a higher priority under such subsection.

"(2) ORDER OF PRIORITY.—For purposes of this subsection, the following provisions of this Act are listed in order of priority from highest to lowest:

"(A) Section 8(a).

"(B) Section 31(b)(2)(B).

"(C) Section 31(b)(2)(A).

"(D) Section 8(m).

"(3) PRIORITY OF CERTAIN OTHER PROCUREMENT PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided under any provision of this Act referred to in paragraph (2) if the procurement would otherwise by made from a different source under section 4124 or 4125 of title 18, United States Code, or the Act entitled 'An Act to create a Committee on Purchases of Blind made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 47).".

(j) PROCUREMENT PROGRAM FOR VERY SMALL BUSINESS CONCERNS.—Section 15 of the Small Business Act (15 U.S.C. 644) is further amended by adding at the end the following new subsection:

"(s) PROCUREMENT PROGRAM FOR VERY SMALL BUSINESS CONCERNS.—

"(1) ESTABLISHMENT.—The Administrator shall establish and carry out a program in accordance with the requirements of this subsection to provide improved access to Federal contract opportunities for very small business concerns.

"(2) PROCUREMENT CONTRACTS.—

"(A) IDENTIFICATION OF CONTRACTS.—The Administrator shall identify procurement contracts of Federal agencies for award under the program.

"(B) CONTRACT AWARDS.—Under the program established pursuant to this subsection, the award of a procurement contract of a Federal agency identified by the Administrator pursuant to subparagraph (A) shall be made by the agency to a very small business concern selected, and determined to be responsible, by the agency.

"(C) COMPETITION.—All contract opportunities offered for award under the program shall be awarded on the basis of competition among very small business concerns. A contracting officer may rely in good faith on a written certification that a small business concern is a very small business concern.

"(3) FINANCIAL ASSISTANCE.—In order to assist very small business concerns receiving contract awards under the program, the Administrator shall establish a preauthorization program for such concerns for the purpose of receiving financial assistance under section 7(a).

"(4) VERY SMALL BUSINESS CONCERN.—For purposes of this subsection, the term 'very small business concern' means a small business concern that has not more than 15 employees and—

"(A) in the case of a small manufacturer, annual gross receipts of not more than $2,000,000; or

"(B) in any other case, annual gross receipts of not more than $500,000.

"(5) REGULATIONS.—The Administrator shall—

"(A) issue proposed regulations to carry out this subsection not later than 180 days after the date of enactment of this subsection; and

"(B) issue final regulations to carry out this subsection not later than 270 days after the date of enactment of this subsection.".

(k) OTHER AMENDMENTS TO SECTION 15.—

(1) Section 15(e)(1) of the Small Business Act (15 U.S.C. 644(e)(1)) is amended by inserting "in the following order" after "concerns".

(2) Section 15(e)(4) of the Small Business Act (15 U.S.C. 644(e)(4)) is amended by striking "bundled".

(3) Section 15(k)(9) of the Small Business Act (15 U.S.C. 644(k)(9)) is amended by striking "Administration" and inserting "Administrator".

(4) Section 15(p)(4)(A) of the Small Business Act (15 U.S.C. 644(p)(4)(A)) is amended by striking "Administration" and inserting "Administrator".

SEC. 211. AUTHORIZATION OF APPROPRIATIONS; ETC.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended to read as follows:

"SEC. 20. AUTHORIZATION OF APPROPRIATIONS; ETC.

"(a)(1) For fiscal year 2004 and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

"(A) to carry out the Small Business Development Center Program under section 21, but not to exceed the annual funding level, as specified in section 21(j)(7);

"(B) to pay the expenses of the National Small Business Development Center Advisory Board, as provided in section 21(m)(1);

"(C) to pay the expenses of the information sharing system, as provided in section 21(o);

"(D) to pay the expenses of the association referred to in section 21(k) for conducting the certification program, as provided in section 21(l); and

"(E) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the accreditation program conducted by the association referred to in section 21(l).

"(2)(A) Notwithstanding any other provision of law, the Administrator shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to—

"(i) the availability of qualified applications; and

"(ii) limitations contained in appropriations Acts.

"(B) Nothing in this paragraph authorizes the Administrator to reduce or limit its authority to enter into such commitments.

"(3) Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures or participating securities under title III of the Small Business Investment Act of 1958 may be obligated in one fiscal year and disbursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

"(4) The amount of deferred participation loans authorized in this section—

"(A) shall mean the net amount of the loan principal guaranteed by the Administrator (and does not include any amount which is not guaranteed); and

"(B) shall be available for a national program, except as otherwise provided in section 7(a).

"(b) There are authorized to be appropriated to the Administration for each fiscal year such sums as may be necessary to carry out the provisions of this Act and the Small Business Investment Act of 1958. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b) of this Act; and there are authorized to be transferred from such sums as may be necessary and appropriate for such administrative expenses.

"(c) FISCAL YEAR 2004.—

"(1) PROGRAM LEVELS.—THE FOLLOWING PROGRAM LEVELS ARE AUTHORIZED FOR FISCAL YEAR 2004:

"(A) For the programs authorized by this Act, the Administrator is authorized to make—

"(i) $70,000,000 in technical assistance grants, as provided in section 7(m); and

"(ii) $100,000,000 in direct loans, as provided in section 7(m).

"(B) For the programs authorized by this Act, the Administrator is authorized to make $22,000,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $16,000,000,000 in general business loans as provided in section 7(a);

"(ii) $5,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958; and

"(iii) $500,000,000 in loans as provided in section 7(a)(21).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administrator is authorized to make—

"(i) $5,000,000,000 in purchases of participating securities; and

"(ii) $4,000,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) There is authorized to be appropriated $7,000,000 to carry out section 12(b).

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2004 such sums as may be necessary to carry out this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2004—

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

"(ii) the Administrator may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that he may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

"(d) FISCAL YEAR 2005.—

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

"(A) For the programs authorized by this Act, the Administrator is authorized to make—

"(i) $$75,000,000 in technical assistance grants as provided in section 7(m); and

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

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

"(i) $16,500,000,000 in general business loans as provided in section 7(a);

"(ii) $6,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958; and

"(iii) $500,000,000 in loans as provided in section 7(a)(21).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

"(i) $5,500,000,000 in purchases of participating securities; and

"(ii) $4,500,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) There is authorized to be appropriated $7,000,000 to carry out section 12(b).

"(2) ADDITIONAL AUTHORIZATIONS.—

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

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

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

"(ii) the Administrator may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that he may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.".

SEC. 212. SMALL BUSINESS DEVELOPMENT CENTERS.

(a) IN GENERAL.—Section 21 of the Small Business Act (15 U.S.C. 648) is amended to read as follows:

"SEC. 21. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

"(a) ESTABLISHMENT OF PROGRAM.—The Administrator is authorized to make grants to any eligible applicant to establish the network of small business development centers proposed in the plan submitted by such applicant under subsection (b).

"(b) SELECTION OF GRANTEES.—

"(1) APPLICATION.—An eligible applicant may apply for a grant under subsection (a) by submitting to the Administrator for approval a plan for establishing a network of small business development centers.

"(2) SELECTION.—The Administrator shall select the applicant that demonstrates it has the budgetary and other resources to ensure that it will provide the most comprehensive and coordinated assistance throughout the State. The Administrator shall require the grantee to have a separate budget for the purpose of operating its network of small business development centers and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 29 to provide for the operation of the small business development centers. The Administrator may approve, conditionally approve, or reject, a plan or combination of plans submitted under this section. The Administrator may not delegate the authority to select grantees under this section except to the Deputy Administrator.

"(3) LIMITATION BY STATE.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the Administrator shall select one grantee from each State to serve the entire State.

"(B) UNAVAILABILITY EXCEPTION.—The Administrator may select 2 grantees to serve a State if no eligible applicant submits an application to serve the entire State. With respect to any such State, the Administrator, at the end of the 2-year period beginning on the date of the selection of such grantees, shall seek applications under this subsection for the purpose of replacing such grantees with a single grantee to serve the entire State.

"(C) HISTORICAL EXCEPTION.—Subparagraph (A) shall not apply with respect to any State if multiple grantees served such State during calendar year 2000 or 2001.

"(D) CERTAIN TERRITORIES.—In the case that no eligible applicant from a qualified territory applies for a grant under this section, the Administrator may select a grantee from any State to serve such qualified territory. For purposes of the preceding sentence, the term 'qualified territory' means Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) ELIGIBLE APPLICANT.—For purposes of this section, the term 'eligible applicant' means—

"(A) any institution of higher education;

"(B) any women's business center operating pursuant to section 29; or

"(C) in the case of an entity that was receiving a grant under this section on December 31, 1990, any of the following:

"(i) Any State government or any agency thereof.

"(ii) Any regional entity.

"(iii) Any State-chartered development, credit or finance corporation.

"(iv) Any entity formed by two or more of the entities described in this paragraph.

"(5) REQUIREMENT TO SEEK APPLICATIONS.—If for any reason a grant under this section is terminated or not renewed, the Administrator shall seek applications from eligible applicants with respect to such grant.

"(c) GRANT PROVISIONS.—

"(1) AGREEMENT BETWEEN GRANTEE AND ADMINISTRATOR.—The Administrator and the grantee shall jointly develop, negotiate, and agree upon the terms and conditions of the grant. The grantee shall also consult with the district office or offices within the State to determine the special services and assistance that are needed by the community or communities served by the grantee's small business development centers.

"(2) REQUIREMENTS.—Each grant shall—

"(A) allow the grantee to serve portions of the State by subcontracting the operation of a small business development center to another entity, provided that such small business development centers shall, to the extent feasible, be located at institutions of higher education or Women's Business Centers established pursuant to section 29 of this Act;

"(B) ensure that the grantee provides services as close as possible to small business concerns by providing extension services and utilizing satellite facilities, including those of any subcontractor;

"(C) ensure that the grantee provides facilities and staff for each small business development center to provide maximum accessibility and benefit to small business concerns;

"(D) ensure that the grantee is utilizing the resources of other Federal agencies in providing the services and assistance set forth in subsection (f); and

"(E) allow the grantee to enter into a contract described in subsection (g)(2).

"(3) PROHIBITION ON DELEGATION TO DISTRICT OFFICES.—The Administrator shall not delegate any authority under paragraph (1) to any employee of the Administration located in a regional or district office.

"(4) FORM OF GRANT AGREEMENTS.—For purposes of this section, the term 'grant' includes any contract or cooperative agreement.

"(5) PROHIBITION ON CERTAIN GRANT REQUIREMENTS.—The Administrator shall not require, and a grant agreement shall not include a requirement, that the grantee serve a particular number of small business concerns with respect to loans under section 7 of this Act or title V of the Small Business Investment Act of 1958.

"(d) TERM, RENEWAL, AND TERMINATION OF GRANTS.—

"(1) TERM OF GRANTS.—Each grant made under this section shall be made on the basis of a calendar year or the Federal fiscal year, as determined by the Administrator.

"(2) AUTOMATIC RENEWAL.—Unless the Administrator for cause terminates the grant or the grantee decides not to seek renewal of the grant, the Administrator and the grantee shall renew the agreement and may make mutually satisfactory modifications to the agreement. The renewal shall take effect on the date of termination of the old agreement.

"(3) STANDARDS FOR TERMINATION.—After the opportunity for notice and comment and consultation with the association authorized by subsection (k), the Administrator shall promulgate standards for determining when cause exists to

terminate a grantee. Such standards shall be codified in the Code of Federal Regulations and shall take into account the grantee's compliance with the standards set forth in the grant agreement, any budgetary restrictions faced by the grantee, the overall economic climate in the State served by the grantee, and the accreditation of the grantee's small business development centers (whether operated by the grantee or through a subcontractor) under the program established pursuant to subsection (l).

"(4) NOTICE OF TERMINATION.—If the Administrator determines that cause exists to terminate a grant agreement under this section, the Administrator shall provide the grantee with written notification setting forth the reasons therefore and affording the applicant an opportunity for a hearing pursuant to sections 554, 556, and 557 of title 5, United States Code.

"(e) MANAGEMENT OF SMALL BUSINESS DEVELOPMENT CENTERS BY GRANTEES.—

"(1) APPOINTMENT OF GRANTEE DIRECTOR.—Each Grantee shall appoint a full-time director to oversee the operations of the grant, the subcontractors to the grantee, and the small business development centers operated by the grantee. The grantee's director shall be responsible for accounting for any Federal funds used by the grantee to carry out the requirements of this section. The grantee shall have the sole discretion of selecting the director without requiring the approval of the Administrator, except that the Administrator may terminate the employment of the grantee's director if the Administrator determines that the grantee's director is unfit for the position because of a prior conviction for a felony.

"(2) SMALL BUSINESS DEVELOPMENT CENTER STAFF.—Each small business development center shall have a staff, which shall be full-time, part-time, or on a contract basis, as the grantee may determine.

"(3) EXPENDITURES.—Expenditures of funds by the grantee shall not require the approval of the Administrator except that the Administrator may prohibit an expenditure using Federal funds if, after consultation with the General Counsel, the Administrator determines that such expenditure violates Federal law.

"(f) SERVICES PROVIDED BY THE GRANTEE THROUGH SMALL BUSINESS DEVELOPMENT CENTERS.—

"(1) IN GENERAL.—Each grantee and its subcontractors shall assist small business concerns 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. Small Business Development Centers shall, in providing assistance to small manufacturers, coordinate such assistance and utilize the resources of the Manufacturing Extension Partnership of the National Institutes of Standards and Technology.

"(2) PERIODIC MODIFICATION.—Each grantee or its subcontractors shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community and those of small manufacturers in particular.

"(3) ACCESS TO PROFESSIONALS.—Each grantee shall ensure that small business development centers provide access to:

"(A) Business analysts to counsel, assist, and inform small business clients.

"(B) Technology transfer agents to provide state of art technology to small business concerns through coupling with national and regional technology data sources.

"(C) Information specialists to assist in providing information searches and referrals to small business concerns.

"(D) Part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises.

"(E) Laboratory and adaptive engineering facilities.

"(4) SERVICES.—Each grantee shall ensure that the services provided by its network of small business development centers include—

"(A) furnishing one-to-one individual counseling to small business concerns, including—

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

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

"(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business

startup planning, existing business expansion, and export planning; and

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

"(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small business concerns, including—

"(i) working to increase the access of small business concerns 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 small manufacturers;

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

"(iv) assisting small manufacturers in developing more efficient operations, including coordination of assistance with the Manufacturing Extension Partnership of the National Institutes of Standards and Technology;

"(C) in cooperation with the Department of Commerce, the entities providing services pursuant to section 12(d), and other relevant Federal agencies, actively assisting small business concerns in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business concerns and prescreened foreign buyers, assisting small business concerns to participate in international trade shows, assisting small business concerns in obtaining export financing, assisting small manufacturers in identifying supply chain management opportunities, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the grantee and the Administrator may work in cooperation with the State to establish a State international trade center for these purposes;

"(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small business concerns;

"(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 concerns doing business, or attempting to develop business, in foreign markets;

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

"(G) assisting small business concerns 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 identi-

fied 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;

"(H) maintaining current information concerning Federal, State, and local regulations that affect small business concerns and counsel small business concerns on methods of compliance. Counseling and technology development shall be provided when necessary to help small business concerns 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 business concerns;

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

"(N) assisting rural small business concerns in developing marketing and production strategies that will enable them to better compete in the domestic market by providing technical assistance needed by rural small business concerns, by making available managerial assistance to rural small business concerns, and by providing information and assistance in obtaining financing for business startups and expansion;

"(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business concerns 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 business concerns 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 business concerns can be referred;

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

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

"(S) providing small business concerns 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;

"(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs;

"(U) in the case of a small business development center located at an institution of higher learning, hosting semi-annually a procurement conference to which the grantee (or its subcontractors) invites small business concerns, including small manufacturers, to meet with the procurement officials of such institution in an effort to increase procurement by such institution from small business concerns and small manufacturers;

"(V) providing comprehensive plans (developed in cooperation with relevant State and Federal agencies) relating to the export potential of small business concerns, including small manufacturers; and

"(W) assisting small business concerns to develop and implement strategic business plans to timely and effectively respond to the closure of a large business concern that has a significant adverse impact on the community—

"(i) by developing broad economic assessments of the adverse impacts of such closure;

"(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 adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms;

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

"(v) by assisting unemployed individuals in establishing a small business concern.

"(g) SPECIAL RULES RELATING TO SMALL BUSINESS DEVELOPMENT CENTERS.—

"(1) SERVICES TO OUT-OF-STATE SMALL BUSINESS CONCERNS.—The Administrator may allow a small business development center to serve small business concerns located outside the State in which such center is located (or, in the case of a State with more than one grantee, outside the area served by the grantee) to the extent such business concerns are located within close geographical proximity to the small business development center as determined by the Administrator.

"(2) CONTRACTS WITH OTHER AGENCIES.—Subject to the restrictions set forth in this paragraph, a grantee (or its subcontractors, with the grantee's approval) may contract with a Federal Department or agency to provide specific assistance to small business concerns through its network of small business development centers. Before bidding on a contract described in this paragraph, a grantee shall receive approval from the Administrator. Before granting approval, the Administrator shall consider the subject and scope of the contract and the extent to which performance of the contract would provide assistance to small business and not impair the performance of the grantee's obligations under this section. A contract for assistance under this paragraph shall not count toward the achievement of any contracting goal under section 15(g).

"(3) SMALL BUSINESS VENDORS.—Each grantee shall ensure, to the extent practicable, that its network of small business development centers utilize and compensate qualified small business vendors, including private management consultants, private consulting engineers, and private testing laboratories, to provide services under this section to small business concerns. To the extent appropriate for the community served by the small business development center, such qualified small business vendors should include at least one such vendor with expertise in manufacturing and assisting small manufacturers.

"(4) COORDINATION WITH DISTRICT OFFICES, ETC.—The grantees shall ensure that the small business development centers shall work in close cooperation with the Administration's regional and district offices, the local small business community, and appropriate State and local agencies. No action by a grantee or its subcontractors or staff shall require the approval of any employee in a regional or district office of the Administration. Any such employee shall, after consultation with district counsel, notify the Assistant Administrator for Small Business Development Centers if such employee believes that the grantee or its subcontractors or staff has taken action that violates the law or jeopardizes the legal position of the United States.

"(5) ASSISTANCE FROM STATE INTERNATIONAL TRADE OFFICES.—The grantee may use funds provided by State international trade offices and co-locate employees of such offices at small business development centers.

"(6) COORDINATION WITH ADMINISTRATION.—On an annual basis, the grantee, after consultation with the district director, shall review and coordinate public and private partnerships and cosponsorships with the Administrator for the purpose of more efficiently leveraging available resources on a national and a State basis. Should the grantee be unable to consult with the district director, the grantee shall consult with the Assistant Administrator for Small Business Development Centers.

"(7) PROHIBITION ON CERTAIN FEES.—Each grantee shall ensure that small business development centers shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

"(8) PRIVACY REQUIREMENTS.—

"(A) IN GENERAL.—Each grantee shall ensure that small business development centers shall not disclose the name or address of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, except that—

"(i) the Administrator shall require such disclosure if ordered to do so by a court in any civil or criminal action; and

"(ii) if the Administrator considers it necessary while undertaking a financial audit of a small business development center or the grantee's network of small business development centers, the Administrator shall require such disclosure for the sole purpose of undertaking such audit.

"(B) REGULATIONS.—After notice and comment and not later than 180 days after the date of the enactment of this subparagraph, the Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under subparagraph (A)(ii).

"(h) ADDITIONAL GRANTS.—

"(1) IN GENERAL.—Any grantee may apply to the Administrator 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;

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

"(D) small manufacturers.

"(2) CERTAIN RULES TO APPLY.—Except as otherwise provided in this subsection, any additional grant under this subsection shall be subject to rules similar to the rules that apply to grants made under subsection (a).

"(3) GRANT AMOUNT.—A grant shall not be made under this subsection if such grant which would exceed the grantee's pro rata share of a $15,000,000 program based upon the populations to be served by the grantee as compared to the total population of the United States. The minimum amount of eligibility for any State shall be $100,000. Any additional grant made under this section shall not be taken into account for purposes of the dollar program limitations specified in subsection (j).

"(4) REALLOCATION OF UNUSED FUNDS.—If the Administrator has not received an application for an additional grant from a grantee pursuant to this subsection within 90 days after the Administrator and the grantee have signed an agreement pursuant to subsection (c) or within 60 days after the grantee and Administrator has renewed an agreement pursuant to subsection (c), the Administrator may make such grant to any eligible applicant (determined without regard to so much of subsection (b)(4)(C) as precedes '1990,') in that State to carry out the activities specified in this subsection subject to the requirements of paragraphs (2) and (3).

"(i) MATCHING FUNDS.—

"(1) IN GENERAL.—The Administrator shall require as a condition of any grant (or amendment or modification thereof) made to a grantee under this section, that a matching amount 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.

"(2) RESTRICTION.—The matching amount described in paragraph (1) shall not include—

"(A) any indirect costs or in-kind contributions derived from any Federal program; and

"(B) any amount received under a contract described in subsection (g)(2).

"(j) FUNDING FORMULA.—

"(1) IN GENERAL.—Subject to paragraph (3), the amount of funds to be made available to the grantee or grantees within a State under this subsection shall be equal to an amount determined in accordance with the following formula:

"(A) The annual amount made available for the Small Business Development Center Program under section 20(a), less any reductions made for ex-

penses authorized by paragraph (5), shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

"(B) If the pro rata amount calculated under subparagraph (A) for any State is less than the minimum funding level under paragraph (3), the Administrator shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

"(C) The aggregate amount calculated under subparagraph (B) shall be deducted from the amount calculated under subparagraph (A) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

"(D) The aggregate amount deducted under subparagraph (C) shall be added to the funds of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of funds made available to any State under this subsection shall not be reduced to an amount below the minimum funding level.

"(2) FUNDS AVAILABILITY DETERMINATION.—The amount of funds that one or more grantees within a State are eligible to receive under this subsection shall be the amount determined under paragraph (1), subject to any modifications required under paragraph (3), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with paragraph (4). The amount of funds received by one or more grantees in any State under any provision of this subsection shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subsection (i).

"(3) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

"(A) If the amount made available is not less than $81,500,000 and not more than $90,000,000, the minimum funding level shall be $500,000.

"(B) If the amount made available is less than $81,500,000, the minimum funding level shall be the remainder of $500,000 minus a percentage of $500,000 equal to the percentage amount by which the amount made available is less than $81,500,000.

"(C) If the amount made available is more than $90,000,000, the minimum funding level shall be the sum of $500,000 plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90,000,000.

"(4) DISTRIBUTIONS.—Subject to paragraph (3), if one or more grantees within a State do not apply for, or use, their full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

"(A) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administrator shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

"(B) If any funds remain after the application of subparagraph (A), the remaining amount may be distributed as supplemental funds to a grantee or grantees in any State, as the Administrator determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (k).

"(5) USE OF AMOUNTS.—Of the amounts made available in any fiscal year to carry out this section not more than $500,000 may be used by the Administrator to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1).

"(6) EXCLUSIONS.—Funds made available to one or more grantees within a State provided by the Administrator or another Federal agency to carry out subsection (f)(4), (g)(2), (h), or (o) or for supplemental grants set forth in paragraph (4)(B), shall not be included in the calculation of maximum funding to be made available to one or more grantees within the State under paragraph (2).

"(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $135,000,000 for fiscal year 2004 and $145,000,000 for fiscal year 2005. The authority to award grants under this section shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.

"(k) FORMATION OF ASSOCIATION.—The grantees' directors are authorized to form an association to pursue matters of common concern. If more than a majority of the grantees' directors are members of such an association, the Administrator is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents—

"(1) announcing the annual scope of activities pursuant to this section;

"(2) requesting proposals to deliver assistance as provided in this section; and

"(3) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated grant agreement for use on an annual basis when entering into agreements with grantees.

"(l) PROGRAM EXAMINATION AND ACCREDITATION.—

"(1) EXAMINATION.—The Administrator shall develop and implement a biennial programmatic and financial examination of each network of small business development centers established pursuant to this section. The biennial examination shall be conducted by the Assistant Administrator for Small Business Development Centers.

"(2) ACCREDITATION.—The Administrator shall provide financial support, by contract or otherwise, to the association authorized by subsection (k) for the purpose of developing and implementing a small business development center accreditation program.

"(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—

"(A) IN GENERAL.—In renewing a grant or cooperative agreement or contract of a grantee, the Administrator shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

"(B) ACCREDITATION REQUIREMENT.—The Administrator may not renew any grant under this section unless the grantee's small business development centers have been accredited under the program conducted pursuant to this subsection, except that the Assistant Administrator for Small Business Development Centers may waive such accreditation requirement if the Assistant Administrator determines that the grantee is making a good faith effort to obtain accreditation for each of the grantee's small business development centers.

"(m) SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARDS.—

"(1) NATIONAL SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARD.—

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

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

"(2) LOCAL SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARDS.—Each grantee's director shall establish an advisory board for the grantee's network of small business development centers. The district director shall have no authority to approve or disapprove the members of the advisory board selected by the grantee's director.

"(n) ADMINISTRATION OF PROGRAM.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the program established by this section shall be administered by the Administrator, acting through the Assistant Administrator for Small Business Development Centers

with such oversight by the Associate Administrator for Enterprise Outreach and Training as the Administrator determines to be appropriate.

"(2) DUTIES OF ASSISTANT ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—The duties of the Assistant Administrator for Small Business Development Centers shall include recommending the annual program budget, reviewing the annual budgets submitted by each grantee, establishing appropriate funding levels therefore, advising the Administrator on the selection of grantees to participate in the program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between grantees and their subcontractors and conducting audits of recipients of grantees under this section.

"(3) CONSULTATION REQUIREMENTS.—In carrying out the duties described in paragraph (2), the Assistant Administrator shall confer with and seek the advice of the advisory boards established pursuant to subsection (m) and the heads of the regional and district offices of the Administration.

"(o) ESTABLISHMENT OF INFORMATION SHARING SYSTEM.—

"(1) IN GENERAL.—The Administrator, in consultation with the grantees, their subcontractors, and the association authorized by this section shall develop and implement an information sharing system. Such system shall—

"(A) allow small business development centers to exchange information about their programs;

"(B) provide information central to technology transfer; and

"(C) provide information central to increased utilization by United States businesses of sourcing their procurement requirements with small manufacturers.

"(2) GRANT AUTHORITY.—The Administrator may make grants to one or more grantees to carry out the provisions of this subsection. Such grants shall be awarded for a period of not to exceed 5 years. The matching funds requirements of subsection (i) shall not be applicable to grants made under this subsection.

"(p) COOPERATION WITH FEDERAL SCIENCE RESEARCH FACILITIES AND AGENCIES.—

"(1) IN GENERAL.—Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administrator 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 Administrator is authorized to reimburse the laboratories for such services.

"(2) NATIONAL SCIENCE FOUNDATION.—The National Science Foundation is authorized and directed to cooperate with the Administrator in developing and establishing programs to support small business development centers.

"(3) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with grantees and their small business development centers.

"(q) REGULATIONS.—In promulgating regulations to carry out this section, the Administration shall identify, and require grantee compliance with, the provisions included in uniform requirements of Office of Management and Budget (OMB) Circulars which govern audits, cost principles and administrative requirements for Federal grants, and contracts and cooperative agreements.".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 27(g) of the Small Business Act (15 U.S.C. 654(g)) is amended by striking "section 21(c)(3)(T)" and inserting "section 21(f)(4)(T)".

(c) EFFECTIVE DATE.—

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

(2) GRANTS.—To the extent that the amendment made by subsection (a) applies with respect to grants, such amendment shall apply to grants made, renewed, or terminated after the date of the enactment of this Act.

(d) TRANSITION RULES.—

(1) MULTIPLE GRANTEES REPLACED WITH SINGLE GRANTEE.—In the case of a State which is served by two or more grantees under section 21 of the Small Business Act on the date of the enactment of this Act, the Administrator shall be required to select a new grantee for such State following the selection process set forth in such section (as in effect on the day after the date of the enactment of this Act) if the grantees serving such State on the date of the enactment of this Act were selected after January 1, 2002.

(2) SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARDS.—Each member of the National Small Business Development Center Advisory Board and each

member serving on a local small business development center advisory board on the day before the date of the enactment of this Act shall continue to so serve until the end of such member's term.

SEC. 213. ASSIGNMENT OF EMPLOYEES OF THE OFFICE OF INTERNATIONAL TRADE.

Section 22 of the Small Business Act (15 U.S.C. 649) is amended by adding at the end the following new subsection:

"(h) In carrying out this section, the Administrator shall ensure that the number of full-time equivalent employees of the Office assigned to the one-stop shops referred to in section 2301(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)) is not less than the number of such employees so assigned on January 1, 2003.".

SEC. 214. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

Section 23 of the Small Business Act (15 U.S.C. 650) is amended to read as follows:

"SEC. 23. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

"(a) IN GENERAL.—The Administrator is authorized—

"(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

"(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and

"(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) in accordance with the purposes of this Act.

"(b) CAPITAL DIRECTIVE.—The Administrator may determine that failure of a small business lending company to maintain capital at the minimum level established by the Administrator is an unsafe and unsound practice. In addition to any other action authorized by law, the Administrator may issue a directive to a small business lending company that does not comply with the minimum capital requirement requiring the small business lending company to increase capital to level established by the Administrator.

"(c) CIVIL ACTION.—If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

"(d) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

"(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act—

"(A) for false statements knowingly made in any written submission required under this Act;

"(B) for omission of a material fact from any written submission required under this Act;

"(C) for willful or repeated violation of this Act;

"(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or

"(E) for violation of any cease and desist order of the Administrator under this section.

"(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

"(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

"(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

"(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed

to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

"(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5, United States Code the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

"(e) CEASE AND DESIST ORDER.—

"(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

"(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

"(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

"(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

"(f) PROCEDURE FOR REVOCATION OR SUSPENSION OF LOAN AUTHORITY AND FOR CEASE AND DESIST ORDER.—

"(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

"(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

"(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

"(g) REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIAL.—

"(1) DEFINITION.—In this section, the term 'management official' means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company's or lender's activities under section 7(a) of this Act.

"(2) REMOVAL OF MANAGEMENT OFFICIAL.—

"(A) NOTICE.—The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

"(i) willfully and knowingly commits a substantial violation of—

"(I) this Act;

"(II) any regulation issued under this Act;

"(III) a final cease-and-desist order under this Act; or

"(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

"(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

"(B) CONTENTS OF NOTICE.—A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to section 554, 556, and 557 of title 5, United States Code, will be held thereon.

"(C) HEARING.—

"(i) TIMING.—A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

"(I) the management official, and for good cause shown; or

"(II) the Attorney General.

"(ii) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

"(D) ORDER OF REMOVAL.—

"(i) IN GENERAL.—In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

"(ii) EFFECTIVENESS.—An order under clause (i) shall—

"(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

"(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

"(3) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

"(A) IN GENERAL.—In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act.–

"(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A)—

"(i) shall take effect upon service of notice under paragraph (2); and

"(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

"(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

"(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

"(C) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

"(4) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

"(A) IN GENERAL.—If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

"(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

"(C) AUTHORITY UPON CONVICTION.—If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

"(D) AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

"(5) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR A NON-FEDERALLY REGULATED LENDER.—Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

"(6) FINAL AGENCY ACTION AND JUDICIAL REVIEW.—

"(A) ISSUANCE OF ORDERS.—After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

"(B) JUDICIAL REVIEW.—An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

"(h) APPOINTMENT OF RECEIVER.—

"(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver for assets of the company or lender.

"(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

"(i) POSSESSION OF ASSETS.—

"(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

"(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

"(j) PENALTIES AND FORFEITURES.—

"(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than $100 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

"(2) The Administration may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the 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. 215. REAUTHORIZATION OF PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.

Paragraph (1) of section 27(g) of the Small Business Act (15 U.S.C. 654(g)) is amended by striking "$5,000,000 for each of fiscal years 2001 through 2003" and inserting "$2,000,000 for each of fiscal years 2003 through 2005".

SEC. 216. WOMEN'S BUSINESS CENTER PROGRAM.

Section 29 of the Small Business Act (15 U.S.C. 656) is amended to read as follows:

"SEC. 29. WOMEN'S BUSINESS CENTER PROGRAM.

"(a) DEFINITIONS.—For purposes of this section:

"(1) 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.

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

"(A) a women's business center; or

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

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

"(ii) whose services are targeted to women; and

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

"(b) AUTHORITY.—The Administrator may provide financial assistance to private nonprofit organizations to conduct projects which will receive Federal funding for 5 years and those that receive extensions for funding under the conditions set forth in this section 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) SUBMISSION OF 5-YEAR PLANS.—

"(1) In response to solicitations made by the Administrator requesting applications for grants to operate women's business centers, each applicant organization initially shall submit a 5-year plan to the Administrator detailing the budget required to provide the services set forth in subsection (b), the services that will be provided, the target population, and the proposed fundraising activities to meet the non-Federal contributions mandated by this section.–

"(2)(A) Notwithstanding any other provision of law, the Administrator may use such expedited methods of solicitation and award as the Administrator determines to be appropriate to carry out this section.

"(B) Any expedited procedures utilized by the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit applications.

"(d) CRITERIA.—The Administrator 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 avail-

able and stated in each solicitation for applications made by the Administrator. The criteria shall include—

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

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

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

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

"(e) SELECTION OF GRANTEES.—Assuming other ranking factors to be equal, the Administrator shall make selection of grantees in the following order of preference:

"(1) The Administrator shall select from the applications those that demonstrate the greatest ability to serve women who are socially and economically disadvantaged whether located in standard metropolitan statistical areas or rural areas and without regard to the location of an existing center.

"(2) If, in the opinion of the Administrator, 2 or more applicants have the same rank with respect to service of socially and economically disadvantaged women, the Administrator shall prefer the applicant that proposes to serve part of a State in a State that was served by a higher number of women's business centers at any time in the last 5 years than the number of such centers that serve such State at the time of selection.

"(3) If no application has been received under which an award can be made pursuant to paragraph (2), the Administrator then shall select an applicant that proposes to serve a standard metropolitan statistical area that was served by a higher number of women's business centers at any time in the last 5 years than the number of such centers that serve such area at the time of selection.

"(f) ADMINISTRATOR FUNDING OF GRANTEES.—The Administrator, except as otherwise provided by subsection (m), shall provide funding according to the following formula:

"(1) During the first and second years of operation, two dollars in Federal funds for each dollar in matching funds as required by subsection (g).

"(2) During the third, fourth, and fifth years, one dollar in Federal funds for each dollar in matching funds as required by subsection (g).

"(3) The grant agreement shall provide for the mechanism of disbursement of Federal funds by the Administrator including payment in lump sum or installments, in advance, or by way of reimbursement. The Administrator may disburse up to 25 percent of each year's Federal share to a grantee before the non-Federal sector matching funds are obtained.

"(4) If a grantee fails to obtain the required non-Federal contribution at any time during the life of the grant, such grantee shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of the term of the grant, or for any other women's business center which it operates or for which it has applied to establish.

"(5) Prior to approving assistance to a grantee for any other projects, the Administrator shall specifically determine whether the Administrator believes that the grantee will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

"(6) The authority of the Administrator to provide funding pursuant to this section shall only be in effect for each fiscal year and only to the extent and in amounts as are provided for in advance of appropriations Acts.

"(g) MATCHING FUNDS.—

"(1) Except as provided by subsection (n), each grantee, shall be required to obtain matching contributions according to the formula set forth in subsection (f).

"(2) No more than one-half of such contributions may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

"(3) The restriction in paragraph (2) shall apply to all grantees under this section.

"(h) 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 Administrator.

"(i) ANNUAL PROGRAM EXAMINATION.—

"(1) The Administrator 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 Administrator—

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

"(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 (g) and, with respect to any in-kind contributions described in that subsection that were used to satisfy the matching requirements, verification of the existence and valuation of those contributions; and

"(iii) a review of the grantee's success in fundraising plan and whether that needs revision to ensure that the grantee can sustain operations after five years; 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) In conducting such annual examination, the Administrator shall limit the total number of site visits to a particular women's business center to no more than 2 per year, unless the Administrator determines that extraordinary circumstances, as defined in regulations promulgated by the Administrator, requires more than 2 such visits.

"(j) RENEWAL OF FUNDING AND TERMINATION.—

"(1) On an annual basis, commencing with the end of the grantee's second year of operation of a women's business center, the Administrator, based on the program review made pursuant to subsection (i), shall determine whether to continue funding the grantee according to the formula set forth in subsection (f). In determining whether to renew funding during any year of the life of the project operated by the grantee, the Administrator—

"(A) shall consider the results of each annual examination of the center under subsection (i); and

"(B) may withhold funding for the following year or years, if the Administrator determines that—

"(i) the grantee has failed to provide for any women's business center which it operates any information required to by the Administrator to perform the annual program examination required under subsection (i), or the information is deemed to be inadequate to conduct the annual examination under subsection (i);

"(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administrator under subsection (l), or the information provided by the center is inadequate; or

"(iii) the Administrator determines, pursuant to regulations adopted by the Administrator and codified in the Code of Federal Regulations, that the grantee has failed to deliver the services required by subsection (b) taking into account current economic conditions and the target population served by the grantee.

"(2) The Administrator shall not require, as a condition of initial or continued funding, and a grant agreement shall not include a requirement that a women's business center operated by the grantee serve a particular number of women with respect to loans under section 7 of this Act or title V of the Small Business Investment Act of 1958.

"(3) The Administrator shall not fund a grantee for the operation of a women's business center that has been in operation for 5 years unless it applies for and receives an extension of Federal funding pursuant to subsection (m) or the grantee reapplies as a new applicant pursuant to subsection (c) and the Administrator selects the grantee pursuant to subsections (d) and (e).

"(4) If the Administrator makes a determination pursuant to subparagraph (1)(B)(iii), prior to the withholding of any funds, the Administrator shall provide the grantee with a written notification of the reasons and shall provide the grantee with the opportunity for a hearing pursuant to sections 554, 556, and 557 of title 5, United States Code.

"(5) The Administrator shall make a final decision based on the record of the hearing and such decision shall be made within 60 days of the notification provided in paragraph (4).

"(k) MANAGEMENT REPORT.—

"(1) The Administrator shall prepare and submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business

and Entrepreneurship of the Senate a report on the effectiveness of all projects, including those operated pursuant to extensions of Federal funding, conducted under this section.

"(2) 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;

"(F) the number of hours of counseling and training provided and workshops conducted; and

"(G) the most recent analysis, as required under subsection (i)(1)(B), and the subsequent determination made by the Administrator under that subsection.

"(l) AUTHORIZATION OF APPROPRIATIONS.—

"(1) There is authorized to be appropriated—

"(A) $ 16,000,000 for fiscal year 2004; and

"(B) $ 17,500,000 for fiscal year 2005.

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

"(B) Of the amount made available under this subsection for a fiscal year, 1.75 percent shall be available for costs associated with selection, monitoring, and oversight.

"(3)(A) Subject to subparagraph (B), 30.2 percent of the funds authorized pursuant to this subsection shall be reserved to provide extensions of Federal funding to grantees that meet the standards set forth in subsection (m).

"(B) If the Administrator does not distribute all funds reserved for extensions of Federal funding pursuant to subsection (m), the Administrator shall utilize the unawarded funds to grantees according to the priorities set forth in paragraphs (1), (2), and (3) of subsection (e).

"(m) EXTENSIONS OF FEDERAL FUNDING AFTER FIVE YEARS.—

"(1) The Administrator is authorized to extend Federal funding to any grantee for 5 years after the term of the original grant ends.

"(2) In order to receive an extension of Federal funding, the grantee shall submit an application in the fourth year of its operation of a women's business center and has met all of the criteria set by the Administrator for continued funding in its fifth year.

"(n) SELECTION OF GRANTEES FOR EXTENSIONS OF FEDERAL FUNDING.—

"(1) The Administrator shall review each application submitted under paragraph (2) and select grantees for extensions of Federal funding who have—

"(A) a demonstrated record of serving predominantly socially and economically disadvantaged women; and

"(B) are unable to meet their matching fund requirements due to their target populations.

"(2) If the Administrator does not receive any applications that meet the standards of subparagraph (A), the Administrator shall select grantees under this subsection according to the following preferences:

"(A) Those that meet the matching requirements in subsection (f)(2).

"(B) If there are no applicants that meet that standard in subparagraph (A) then based on criteria developed by the Administrator to rank applicants for extensions of Federal funding.

"(3) The Administrator shall maintain a copy of each application submitted under this subsection for not less than 10 years.

"(4) In awarding an extension of Federal funding, the Administrator may condition such award on the grantee obtaining a match requirement at least equal to 2 non-Federal dollars for each dollar of Federal funding except that grantees meeting the standards of paragraph (1)(A) shall only be required to match each Federal dollar with a non-Federal dollar.".

SEC. 217. HUBZONE PROGRAM.

Section 31 of the Small Business Act (15 U.S.C. 657a) is amended to read as follows:

"SEC. 31. HUBZONE PROGRAM.

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

"(b) ELIGIBLE CONTRACTS.—

"(1) AUTHORITY OF CONTRACTING OFFICER.—

"(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 may 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.

"(2) PRICE EVALUATION PREFERENCE IN FULL AND OPEN COMPETITIONS.—

"(A) IN GENERAL.—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.

"(B) FULL AND OPEN COMPETITION.—For purposes of this paragraph, 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).

"(3) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided in paragraph (1) or (2), 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—

"(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).

"(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—

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

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

"(d) LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

"(1) once the Administrator has made the certification required by subsection 3(p)(5)(A)(i) of this Act regarding a qualified HUBZone small business concern and has determined that subsection 3(p)(5)(B)does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

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

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

"(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program established by this section $5,000,000 for each of fiscal years 2004 through 2005.".

SEC. 218. OTHER REPEALS AND REORGANIZATIONS.

(a) SEVERABILITY CLAUSE MOVED TO END OF SMALL BUSINESS ACT.—Section 36 of the Small Business Act is amended to read as follows:

"SEC. 36. SEVERABILITY.

"If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.".

(b) REPEALS.—

(1) Section 19 of the Small Business Act (15 U.S.C. 631 note) is amended to read as follows:

"SEC. 19. [RESERVED].".

(2) Section 24 of the Small Business Act (15 U.S.C. 651) is amended to read as follows:

"SEC. 24. [RESERVED].".

(3) Section 25 of the Small Business Act (15 U.S.C. 652) is amended to read as follows:

"SEC. 25. [RESERVED].".

(4) Section 26 of the Small Business Act (15 U.S.C. 653) is amended to read as follows:

"SEC. 26. [RESERVED].".

(5) Section 28 of the Small Business Act (15 U.S.C. 655) is amended to read as follows:

"SEC. 28. [RESERVED].".

SEC. 219. RULES OF CONSTRUCTION.

(a) REFERENCES.—A reference to a provision of law replaced by this title, including a reference in a regulation, rule, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(b) CONTINUING EFFECT.—Unless otherwise provided in this Act or in an amendment made by this Act, any regulation, rule, or order in effect under a provision of law replaced by this title shall continue in effect under the corresponding provision enacted by this title until repealed, amended, or superseded.

(c) INFERENCES OF REPEAL.—The repeal of a provision of law by this title shall not be construed as a legislative inference that the provision was or was not in effect before its repeal.

TITLE III—OTHER PROVISIONS

SEC. 301. REPORT REGARDING NATIONAL DATABASE OF SMALL MANUFACTURERS.

(a) STUDY AND REPORT.—The Administrator, in consultation with the association of small business development centers authorized by section 21(k) of the Small Business Act, shall—

(1) study the feasibility of creating a national database of small manufacturers that institutions of higher education could access for purposes of meeting procurement needs; and

(2) not later than one year after the date of the enactment of this Act, transmit a report to the Congress regarding the findings and conclusions of such study.

(b) COST ESTIMATE.—The report referred to in subsection (a)(2) shall include an estimate of the cost of creating and maintaining the database described in subsection (a).

SEC. 302. WORKFORCE TRANSFORMATION PLAN.

(a) REORGANIZATION.—The Administrator shall, to the extent permitted by law, reorganize the structure of the Administration and reassign employees in order to—

(1) increase outreach to small business concerns;

(2) improve coordination with Federal contracting officers in an effort to increase prime contract awards to small business concerns;

(3) enable small business concerns to obtain better access to capital;

(4) expand assistance provided to small manufacturers; and

(5) meet goals in this section and the Small Business Act for procurement center representatives and commercial market representatives.

(b) REQUIRED COST SAVINGS.—In carrying out subsection (a), the Administrator shall achieve a 1 percent savings in the overall cost of operating the agency.

(c) INCREASED NUMBER OF PROCUREMENT CENTER REPRESENTATIVES AND COMMERCIAL MARKETING REPRESENTATIVES.—In carrying out subsection (a), the Administrator shall ensure—

(1) that the following number of procurement center representatives are employed by the Administration:

(A) 75 by September 30, 2004; and

(B) 100 by September 30, 2005; and

(2) that the following number of commercial marketing representatives are employed by the Administration:

(A) 25 by September 30, 2004; and

(B) 50 by September 30, 2005.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(e) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall transmit a report to the Congress describing the steps taken by the Administrator to carry out this section. Such report shall contain—

(1) a detailed analysis of how the transformation has—

(A) increased contact with small business concerns;

(B) expanded dollar financings to small business concerns;

(C) increased the total number of prime and subcontracting dollars awarded to small business concerns, including increases in each contracting program established pursuant to sections 8 and 15 of this Act; and

(D) increased assistance provided to small manufacturers; and

(2) the Administrator's assessment of further actions needed to transform the workforce to meet the objectives described in paragraph (1).

SEC. 303. REPEAL OF CERTAIN PROVISIONS OF THE DISASTER RELIEF ACT OF 1970.

(a) IN GENERAL.—Section 237 of the Disaster Relief Act of 1970 (15 U.S.C. 636d) is hereby repealed.

(b) NO EFFECT ON OUTSTANDING LOANS.—The repeal made by this section shall not affect any loan made before the date of the enactment of this Act.

SEC. 304. REGULATIONS ON SIZE STANDARDS OF FRANCHISEES.

(a) PROMULGATION.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall repeal section 121.103(g) of title 13, Code of Federal Regulations (as in effect on the date of the enactment of this Act) and promulgate a new regulation, after opportunity for notice and comment, taking into account whether the franchisee or licensee—

(1) retains the majority of its profits but not less than 51 percent;

(2) bears the burdens of its losses;

(3) shares no common ownership or management personnel with the franchisor or licensor;

(4) maintains daily control of its operations including determining who its customers will be; and

(5) is subject to excessive restrictions on the sale of its business given the interest of the franchisor or licensor in protecting the goodwill of its trademarks, tradenames, or service marks.

(b) FAILURE TO PROMULGATE NEW STANDARD.—If the Administrator fails to comply with subsection (a), any franchisee or licensee shall be treated as small for purposes of the Small Business Act until the Administrator has issued a final regulation as required under subsection (a).

SEC. 305. TEMPORARY SMALL BUSINESS DEVELOPMENT CENTER ASSISTANCE TO INDIAN TRIBE MEMBERS, NATIVE ALASKANS, AND NATIVE HAWAIIANS.

(a) IN GENERAL.—The Administrator of the Small Business Administration may award a grant under this section to any grantee under section 21 of the Small Business Act. A grant under this section shall be used solely to provide services de-

scribed in section 21(f)(4) of the Small Business Act to assist with outreach, development, and enhancement on Indian lands of small business startups and expansions owned by Indian tribe members, Native Alaskans, and Native Hawaiians.

(b) LIMITATION.—A grant shall not be made to a grantee under this section unless the area served by such grantee has a combined population of Indian tribe members, Natives Alaskans, and Native Hawaiians that comprises at least 1 percent of the area's total population, as shown by the latest available census.

(c) GRANT APPLICATIONS.—An applicant for a grant under this section shall submit to the Administrator an application that is in such form as the Administrator may require. The application shall include information regarding the applicant's goals and objectives for the services to be provided using the grant, including—

(1) the capability of the applicant to provide training and services to Indian tribe members, Native Alaskans, and Native Hawaiians;

(2) the locations of the small business development centers that would provide the assistance described in subsection (a);

(3) the required amount of grant funding needed by the applicant to implement the program; and

(4) the extent to which the applicant has consulted with local tribal councils.

(d) APPLICABILITY OF GRANT REQUIREMENTS.—An applicant for a grant under this section shall comply with all of the requirements applicable to a grantee under section 21 of the Small Business Act, except that the matching funds requirements of subsection (i) of such section shall not apply.

(e) MAXIMUM AMOUNT OF GRANTS.—A grantee shall not receive more than $300,000 in grants under this section in a fiscal year.

(f) ADVICE OF LOCAL TRIBAL COUNSELS.—A grantee under this section shall request the advice of local tribal councils regarding how best to provide assistance to Indian tribe members, Native Alaskans, and Native Hawaiians and where to locate centers to provide such assistance.

(g) REGULATIONS.—After providing notice and an opportunity for comment and after consulting with the association recognized by the Administrator under section 21(k) of the Small Business Act (but not later than 180 days after the date of the enactment of this Act), the Administrator shall issue final regulations to carry out this section, including regulations that establish—

(1) standards relating to educational, technical, and support services to be provided by grantees under this section; and

(2) standards relating to any work plan that the Administrator may require a grantee under this section to develop.

(h) DEFINITIONS.—For purposes of this section:

(1) INDIAN LANDS.—The term "Indian lands" has the meaning given the term "Indian country" in section 1151 of title 18, United States Code, the meaning given the term "Indian reservation" in section 151.2 of title 25, Code of Federal Regulations (as in effect on the date of the enactment of this Act), and the meaning given the term "reservation" in section 4 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903).

(2) INDIAN TRIBE.—The term "Indian tribe" has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(3) INDIAN TRIBE MEMBER.—The term "Indian tribe member" means a member of an Indian tribe (other than a Native Alaskan).

(4) NATIVE ALASKAN.—The term "Native Alaskan" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(5) NATIVE HAWAIIAN.—The term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $7,000,000 for each of fiscal years 2004 through 2006.

(j) NONAPPLICABILITY OF CERTAIN LIMITATIONS.—Funding under this section shall not be taken into account under subsections (h), (i), and (j) of section 21 of the Small Business Act.

(k) LIMITATION ON USE OF FUNDS.—The Administrator may carry out this section only with amounts appropriated specifically to carry out this section.

(l) EVALUATION OF PROGRAM.—Not later than March 31, 2006, the Administrator shall transmit to the Congress a report containing an evaluation of the grant program carried out under this section.

SEC. 306. TEMPORARY SMALL BUSINESS DEVELOPMENT CENTER ASSISTANCE FOR VOCATIONAL AND TECHNICAL ENTREPRENEURSHIP DEVELOPMENT.

(a) IN GENERAL.—The Administrator may award a grant under this section to any grantee under section 21 of the Small Business Act. A grant under this section shall be used solely to provide, on a statewide basis, technical assistance to secondary

schools, or to postsecondary vocational or technical schools, for the development and implementation of curricula designed to promote vocational and technical entrepreneurship.

(b) MINIMUM GRANT.—The Administrator shall not make a grant under this section in an amount less than $200,000.

(c) APPLICATION.—Each applicant for a grant under this section shall submit to the Administrator an application in such form as the Administrator may require. The application shall include information regarding the applicant's goals and objectives for the educational programs to be assisted.

(d) REPORT TO ADMINISTRATOR.—The Administrator shall make a condition of each grant under the program that not later than 18 months after the receipt of the grant the grantee shall transmit to the Administrator a report describing how the grant funds were used.

(e) COOPERATIVE AGREEMENTS AND CONTRACTS.—The Administrator may enter into a cooperative agreement or contract with any grantee under this section to provide additional assistance that furthers the purposes of this section.

(f) APPLICABILITY OF GRANT REQUIREMENTS.—An applicant for a grant under this section shall comply with all of the requirements applicable to a grantee under section 21 of the Small Business Act, except that the matching funds requirements of subsection (i) of such section shall not apply.

(g) EVALUATION OF PROGRAM.—Not later than March 31, 2006, the Administrator shall transmit to the Congress a report containing an evaluation of the grant program carried out under this section.

(h) CLEARINGHOUSE.—The association recognized by the Administrator under section 21(k) of the Small Business Act shall act as a clearinghouse of information and expertise regarding vocational and technical entrepreneurship education programs. In each fiscal year in which grants are made under the program, the Administrator shall provide additional assistance to such association to carry out the functions described in this subsection.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $7,000,000 for each of fiscal years 2004, 2005, and 2006.

(j) NONAPPLICABILITY OF CERTAIN LIMITATIONS.—Funding under this section shall not be taken into account under subsections (h), (i), and (j) of section 21 of the Small Business Act.

(k) LIMITATION ON USE OF FUNDS.—The Administrator may carry out this section only with amounts appropriated specifically to carry out this section.

SEC. 307. VERY SMALL BUSINESS CONCERN CONTRACT DATA COLLECTION.

The Administrator and the Administrator of General Services, acting jointly, shall create, within the data collection capabilities of the Federal Procurement Data System, a data element that identifies contract awards to very small business concerns, under section 15(t) of the Small Business Act. In carrying out the preceding sentence, the Administrators shall ensure that the data element is in use by all Federal entities with respect to such awards not later than 90 days after the date of the enactment of this Act.

SEC. 308. VERY SMALL BUSINESS CONCERN PILOT PROGRAM FOR COMPETITION AWARD TO HOME-BASED BUSINESS.

(a) IN GENERAL.—The Administrator shall establish a pilot program that ensures that at least one award to a very small business concern resulting from competition under section 15(t)(2)(C) of the Small Business Act is made to a home-based business.

(b) DEFINITION.—As used in this section, the term "home-based business" means a small business, the headquarters, main office, and records of which are located at the primary residence of the majority owner.

(c) TERM OF PILOT PROGRAM.—The pilot program shall begin not later than 90 days after the date of the enactment of this Act and shall end on September 30, 2007.

SEC. 309. SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESS.

Section 7102(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 15 U.S.C. 644 note) is amended by striking "September 30, 2003" and inserting "September 30, 2005".

SEC. 310. STUDY AND REPORT ON EFFECTIVENESS OF AGGREGATE LIMITATIONS ON AMOUNT OF ASSISTANCE TO ANY SINGLE ENTERPRISE.

(a) STUDY.—The Administrator shall conduct a study of whether the aggregate amount limitation under section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) is an impediment to investment in small manufacturers. In conducting the study, the Administrator shall consult licensees and small manufacturers.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall report the results of the study to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.

SEC. 311. STUDY AND REPORT ON COORDINATION OF NEW MARKETS VENTURE CAPITAL PROGRAM WITH NEW MARKETS TAX CREDIT PROGRAM.

(a) IN GENERAL.—The Administrator shall conduct a study to identify an approach to better coordinate the administration of the New Markets Venture Capital Program under part B of title III of the Small Business Investment Act of 1958 (15 U.S.C. 689 et seq.) with the New Markets Tax Credit under section 45D of the Internal Revenue Code of 1986.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall report the results of the study to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.

SEC. 312. STUDY AND REPORT ON PREMIER CERTIFIED LENDERS PROGRAM.

(a) IN GENERAL.—The Administrator shall enter into a contract with a Federal agency experienced in community development lending and financial regulation or with a member of the Federal Financial Institutions Examinations Council to conduct a study and prepare a report regarding—

(1) the extent to which statutory requirements have caused overcapitalization in the loss reserves maintained by certified development companies participating in the Premier Certified Lenders Program under section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e); and

(2) alternatives for establishing and maintaining loss reserves that are sufficient to protect the Government from the risk of loss associated with loans guaranteed under that Program.

(b) TRANSMISSION OF REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit the report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.

(c) LIMITATION.—The amount of the contract under subsection (a) shall not exceed $75,000.

SEC. 313. DATA COLLECTION CAPABILITIES.

The Administrator shall work with the Administrator of General Services to establish within the data collection capabilities of the Federal Procurement Data System a data element capable of identifying contract awards made as a result of section 7102(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 15 U.S.C. 644 note). Such data element shall be established and populated by Federal agencies awarding contracts as a result of section 7102(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 15 U.S.C. 644 note) within 90 days of the date of the enactment of this Act.

SEC. 314. RESUBMISSION OF DISASTER LOAN APPLICATIONS FOR BUSINESSES AFFECTED BY SEPTEMBER 11, 2001, TERRORIST ATTACKS.

(a) RESUBMISSION OF APPLICATIONS.—Until 90 days after the date of the enactment of this Act, a small business concern may resubmit an application for a loan under to section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) may be resubmitted if the following conditions are met:

(1) ORIGINAL APPLICATION.—The small business concern submitted the original application in response to an injury due, in whole or in part, to the terrorist attacks of September 11, 2001 in New York, New York or Arlington, Virginia.

(2) LOCATION.—On September 11, 2001, and on the date of the resubmission, a facility of the small business concern is located in any of the following:

(A) Bronx, Kings, Nassau, New York, Queens, Richmond, or Westchester county in New York.

(B) Bergen, Hudson, Middlesex, or Union county in New Jersey.

(C) Arlington or Fairfax county or the city of Alexandria in Virginia.

(D) The District of Columbia.

(E) Montgomery county in Maryland.

(3) INABILITY TO OPERATE.—Without regard to physical damage to a facility, the applicant was unable to operate at a facility referred to in paragraph (2) because of—

(A) use of the facility, in whole or in part, for any purpose, by or on behalf of, Federal, State, or local authorities for more than 20 days, beginning on or after September 11, 2001; or

(B) prohibition of use of the facility, in whole or in part, by an order of a Federal agency for more than 20 days, beginning on or after September 11, 2001.

(b) STANDARDS FOR APPROVAL.—The Administrator shall approve a loan with respect to an application resubmitted under subsection (a), if the applicant has a ratio of net operating income to debt service of not less than 1.15. In calculating the ratio, the Administrator shall exclude any Federal or State tax lien or obligation.

(c) SPECIAL RULE.—The Administrator shall resolve any reasonable doubt of likelihood of repayment of an application resubmitted under subsection (a) in favor of the applicant.

SEC. 315. NATIONAL SMALL BUSINESS INCUBATOR PROGRAM.

(a) PURPOSE.—It is the purpose of the National Small Business Incubator Program to:

(1) Promote economic development and the creation of wealth and job opportunity in low-income geographic areas and parts of the country with declining manufacturing bases and among individuals living in such areas through business incubation centers.

(2) Develop a business incubation program with the mission of providing focused assistance to aid in the development of small businesses.

(3) Make grants to economic development organizations and other entities for the purpose of providing business incubation services to small businesses.

(4) Revitalize and reuse industrial sites for economic growth.

(b) GRANT PROGRAM.—

(1) IN GENERAL.—In accordance with the requirements of this subsection, the Administrator may make a 5-year grant to each of 10 eligible organizations to establish and operate a small business incubator program.

(2) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible organization shall submit an application to the Administrator at such time and in such form and manner as the Administrator may require. Each such application shall include the grantee's plan for establishing and operating a small business incubator program.

(3) SELECTION OF GRANTEES.—In selecting the 10 grantees under this subsection, the Administrator shall evaluate and rank applicants in accordance with predetermined selection criteria that will be stated in terms of relevant importance of such criteria. The relative importance of the criteria shall be made publicly available and stated in each solicitation for applicants made by the Administrator. The criteria shall include the following:

(A) The experience of the applicant in conducting business development.

(B) The experience of the applicant in technology and manufacturing.

(C) The extent to which the incubator will assist in the development of low-income, women, or minority business, or the revitalization of depressed manufacturing areas.

(D) The extent to which the proposed site is in an area of high unemployment and will result in the reuse of a previously used industrial site.

(E) The extent to which the applicant has a management team in place with experience in running a business incubator or relevant business development experience.

(F) The extent to which the applicant's plan will result in the economic development of low-income communities or high-unemployment areas.

(G) The ability of the applicant to successfully establish and operate a small business incubator program.

(H) The ability of the applicant to enter into cooperative agreements with lending institutions to provide a streamlined process for business concerns utilizing the small business incubator program to obtain financial assistance, including loans under subsection (c).

(I) The ability of the applicant to provide the services of licensed professionals.

(J) The extent to which the applicant's plan for establishing and operating a small business incubator program will do the following:

(i) Enhance small business development.

(ii) Meet the needs and goals of the community in which the incubator is to be located.

(iii) Serve as a catalyst for further development.

(iv) Involve the rehabilitation of a warehouse, factory, or building which has fallen into disrepair.

(v) Assist in redeveloping a disadvantaged area.

(vi) Target minority and women entrepreneurs.

(vii) Focus on the development of manufacturing and technology.

(viii) Retain or create jobs.

(ix) Include assistance regarding marketing, financial management, human resources development, and access to capital (both debt and equity).

(4) GRANT REQUIREMENTS.—Each grantee shall use the grant funds to establish a small business incubator program, which shall make the following assistance available (on a shared or unshared basis, as the grantee may determine) to businesses participating in such program:

(A) Office space.

(B) Office equipment, including computers, facsimile machines, photocopiers, access to telecommunications services (including broadband services), and manufacturing equipment.

(C) Administrative and technical staff.

(D) Training in the areas of marketing, financial management, human resources, and contracting.

(E) Assistance in obtaining loans, including loans under subsection (c).

(F) Assistance in locating investors and networking with local business organizations.

(G) Individualized reviews of marketing, financial, and business plans, which shall occur monthly for such period as the Administrator may determine and quarterly thereafter.

(H) Legal, accounting, and marketing services.

(I) Mentoring program with established, successful, large businesses to last the duration of the business' stay in the incubator.

(5) ADDITIONAL ASSISTANCE.—A grantee may use grant funds to provide child care services to participating business and any other assistance which is approved by the Administrator.

(6) ADDITIONAL PROGRAM REQUIREMENTS.—

(A) PARTICIPATING BUSINESSES.—Each grantee shall select the businesses which will participate in the grantee's small business incubation program. The grantee shall select businesses which are not yet well established but which have the potential to be self-sustaining. Each grantee shall require participating businesses to participate in the training described in paragraph (4)(D), to submit marketing, financial, and business plans and to participate in the review of such plans described in paragraph (4)(G).

(B) COOPERATIVE AGREEMENTS WITH LENDERS.—Each grantee shall enter into a cooperative agreement with one or more lenders to provide a streamlined process by which participating businesses may obtain loans, including loans under subsection (c).

(C) FEES.—Each grantee may charge participating businesses a fee for the assistance provided to such business by the grantee. The amount of such fee shall be determined under a sliding scale based on the financial success of the participating business. The grantee may not charge a participating business a fee for the first 2 years of such businesses participation in the incubator.

(7) NON-FEDERAL MATCHING FUNDS.—The Administrator shall not make available any grant funds under this subsection until the grantee has contributed non-Federal matching funds in an amount equal to 50 percent of the amount of such grant funds.

(8) ELIGIBLE ORGANIZATIONS.—For purposes of this section, the term "eligible organization" means any of the following:

(A) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

(B) A business league, chamber of commerce, or board of trade described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

(C) A local development agency that is chartered, established, or otherwise sanctioned by a State or local government.

(D) A small business development center (within the meaning of section 21 of the Small Business Act).

(E) A college or university.

(F) A unit of State or local government.

(9) FEDERAL COORDINATION.—The Administrator, in consultation with the Economic Development Administration and the Minority Business Development Agency, shall—

(A) undertake efforts to coordinate and enhance Federal programs that relate to small business incubation programs; and

(B) invite State and local governments, lending institutions, and other appropriate public and private organizations to serve as intermediaries in outreach efforts related to small business incubation programs.

(10) TERMINATION.—The Administrator shall not make any new 5-year grants under this subsection after the end of the 180-day period beginning on the date that funds are first made available to carry out this subsection.

(11) REPORTS.—

(A) INITIAL REPORT.—One year after the first grant is made under this subsection, the Administrator shall transmit to the Congress a preliminary report regarding the National Small Business Incubator Program conducted under this section.

(B) FINAL REPORT.—Four years after the first grant is made under this subsection, the Administrator shall transmit to the Congress a final report regarding the National Small Business Incubator Program conducted under this section. Such report shall include any recommendations of the Administrator regarding ways to improve such program and the recommendation of the Administrator as to whether such program should be extended.

(12) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2004 and 2005, which amounts shall remain available until expended.

(c) LOAN PROGRAM.—

(1) IN GENERAL.—The Administrator may make loans under section 7(a) of the Small Business Act to small business concerns (as defined pursuant to section 3 of the Small Business Act) participating in a small business incubation program described in subsection (b).

(2) LOAN TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the rules which apply under the Small Business Act to loans made under section 7(a) shall apply with respect to loans made under this subsection.

(B) SPECIAL RULES FOR DEFERRED PARTICIPATION LOANS.—In the case of an agreement to participate on a deferred basis in any such loan:

(i) Such participation by the Administration shall be equal to 90 percent of the balance of the financing outstanding at the time of the disbursement of the loan.

(ii) The Administrator shall collect (except in the case of a loan that is repayable in 1 year or less) a guarantee fee, which shall be payable by the participating lender and may be charged to the borrower as follows:

(I) A guarantee fee equal to 0.5 percent of the deferred participation share of a total loan amount that is not more than $150,000.

(II) A guarantee fee equal to 1.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

(III) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is more than $700,000.

(iii) The annual fee assessed and collected on any such loan shall not exceed an amount equal to 0.15 percent of the outstanding balance of the deferred participation share of the loan.

(iv) The Administrator may make such loans without regard to the ability of a small business concern to obtain credit elsewhere.

(v) The Administrator shall make such loans without regard to the availability of collateral to secure such loans.

(vi) The Administrator may charge interest on any such loan. Such charge may not exceed a rate of 4 percent per year.

(3) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Administrator shall issue interim final rules and guidelines to implement this subsection.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 2004 such sums as may be necessary to carry out this subsection, which sums shall remain available until expended.

SEC. 316. REPORT REGARDING EFFECTS OF SALE OF DISASTER LOANS ON BORROWERS.

Not later than 1 year after the date of the enactment of this Act, the Chief Counsel for Advocacy of the Small Business Administration shall report to the Congress regarding the sale by the Administrator of loans made under section 7(b) of the Small Business Act. Such report shall include the following:

(1) A description of the effects of such sales on borrowers.

(2) A description of the effects that prohibiting such sales would have on the operations of the Administration.

(3) Any recommendations of the Chief Counsel for Advocacy for reducing the effects of such sales on borrowers.

SEC. 317. SUSPENSION AND EXTENSION OF CERTAIN DISASTER LOANS RELATED TO THE TERRORIST ATTACKS OF SEPTEMBER 11, 2001.

(a) IN GENERAL.—With respect to any loan made under section 7(b) of the Small Business Act to a qualified small business concern as a result of the terrorist attacks against the United States that occurred on September 11, 2001, the Administrator shall, upon application by such concern during the 2-year period beginning on the date of the enactment of this Act, suspend the payment of principal and interest charges on, and extend the maturity of, the Federal share of such loan for a period of not less than 2 years and not more than 5 years.

(b) QUALIFIED SMALL BUSINESS CONCERN.—For purposes of this section, the term "qualified small business concern" means, with respect to any loan made to such concern under section 7(b) of the Small Business Act, a small business concern that—

(1) was located in an area described in section 314(a)(2) on September 11, 2001; and

(2) would suffer substantial economic injury if required to make the scheduled payments under such loan.

(c) SUBSTANTIAL ECONOMIC INJURY.—For purposes of this section, the term "substantial economic injury" has the meaning given such term in section 7(b)(3)(A)(iii) of the Small Business Act.

SEC. 318. DEFINITIONS.

For purposes of this title:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Small Business Administration.

(2) ADMINISTRATION.—The term "Administration" means the Small Business Administration.

(3) SMALL BUSINESS CONCERN.—The term "small business concern" has the meaning given such term pursuant to section 3(a) of the Small Business Act.

PURPOSE

The purpose of H.R. 2802, the "Small Business Reauthorization and Manufacturing Revitalization Act of 2003" (hereinafter the "Act") is to amend the Small Business Investment Act of 1958 (SBIA) and the Small Business Act (SBA) in order to provide greater efficiencies in the management of various programs by the Small Business Administration ("Administration") and reorient programs authorized by the SBIA and SBA to assist small manufacturers.

The SBA was enacted in 1953 to ensure a viable small business sector of the economy. The SBIA was passed in 1958 to authorize greater financial assistance to small businesses through equity and debt securities backed by federal guarantees. Both statutes have been amended many times creating a jumbled statutory mass with program requirements that are nearly indecipherable. As the SBA and SBIA were amended, their underlying original purpose—to support America's small business industrial base—became muddied.

The primary emphasis of H.R. 2802 is the streamlining of Administration operations while increasing the support provided to small manufacturers. H.R. 2802 accomplishes this goal in a number of ways: (a) it provides for increasing financial resources available to small manufacturers through amendments in the SBIA; (b) streamlines operations of Administration programs by transferring employees and requiring greater accountability for achieving goals for raising the level of financial assistance, counseling, and federal procurement dollars for small business concerns; (c) modifies existing Administration grant programs to provide greater oversight by the Administrator; and (d) mandates improvements in government

contracting procedures to help small business concerns and small manufacturers, in particular.

NEED FOR LEGISLATION

I. A BRIEF SYNOPSIS OF FEDERAL GOVERNMENT CONCERNS ABOUT SMALL BUSINESS

Recognition of the problems facing small businesses first became evident during the farm crises of the late 1880's. Increasing concentration in the railroad industry and the production of foodstuffs resulted in reduced prices being paid to farmers. The results were the enactment of the Interstate Commerce Act and the Sherman Antitrust Act.[1] Both statutes authorized federal agencies to intercede against the actions of large businesses in order to foster a competitive marketplace—one in which small businesses and farmers could thrive.

The Interstate Commerce Act and the Sherman Antitrust Act did not slow the march of increased concentration in production or distribution. The advent of the assembly line and the development of utility monopolies in electricity, natural gas, and telephone service only exacerbated the problems faced by small businesses in competing with larger enterprises. Again farmers were the first to face severe problems in obtaining fair prices from a very heavily concentrated meat packing industry. Congress again reacted by amending the antitrust laws and making it easier for farmers to combine their efforts in order to compete against large food processors and meatpackers.[2]

The Great Depression further exacerbated the problems faced by small, main street establishments. Supermarkets and department stores began to dramatically cut into the market share of small retail establishments by obtaining lower prices from manufacturers. In turn, this enticed consumers to buy goods from these large stores than frequent their smaller neighborhood counterparts. Congress reacted by passing the Robinson-Patman Act which prohibited manufacturers from selling their goods to large and small retailers at different prices.[3]

Issues of competition were not the only problem facing small businesses as the vise of the Depression squeezed the life out of the American economy. The collapse in the securities markets along with problems in other industries created substantial financial problems for commercial banks. Given issues of solvency, banks feared making loans except to the most creditworthy of businesses; that tended to exclude most small businesses. The Reconstruction Finance Corporation was created to provide financing and solvency to banks. In 1934, the Reconstruction Finance Corporation began making some funds available to small businesses.[4]

During World War II, the government dramatically increased procurement form large businesses. Recognizing that dominance of large businesses might not be the best overall policy in ensuring a competitive market for purchases by the federal government,

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[1] J. BEAN, BEYOND THE BROKERED STATE 2–3 (1996).

[2] See id. at 18–19; Pineles, Marketing Orders and the Administrative Process: Fitting Round Fruit into Square Baskets, 5 SAN JOAQUIN AG. L. REV. 89, 91–92 (1995).

[3] J. BEAN, BEYOND THE BROKERED STATE 21–35 (1996).

[4] Id. at 114.

Congress recognized that small manufacturers, like small retailers competing with large retailers, did not have the economies of scale needed to compete with large manufacturers. Their competitive status was complicated by difficulties associated with obtaining needed raw materials (a situation that would repeat itself during the early 1950s). In response, the Smaller War Plants Corporation was created. The Corporation provided direct loans to small businesses, encouraged banks to make loans to small businesses, and acquire prime contracts from the War Production on behalf of small business (a practice that would be repeated by the Administration pursuant to section 8(a) of the Small Business Act).[5]

After World War II, the concerns of small businesses were not alleviated. Congress, as result, maintained the lending authority of the Reconstruction Finance Corporation. The start of the Korean War conflict repeated many of the problems that small businesses faced during the Great Depression and World War II. Congress responded initially by creating the Small Defense Plants Administration (SDPA) whose functions included establishment of a revolving fund for loans and take prime contracts offered by the military.[6]

President Eisenhower proposed the dissolution of both the Small Defense Plants Administration and the Reconstruction Finance Corporation. Congress accepted those proposals and transferred many of the functions to the newly created Small Business Administration.

Unlike its predecessors, the Administration did not simply focus on those small businesses that were critical elements of the defense industrial base (although that was certainly a pivotal concern). Rather the Administration was required to provide assistance to businesses without regard to whether they were involved in war efforts or defense production.[7] It had three primary functions: (1) give financial aid to small businesses; (2) assist small businesses in obtaining federal government contracts, both within the defense sector and outside of it; and (3) provide technical 2 and managerial advice to small businesses. Its mission during the past fifty years has not significantly changed.

Although the House bill created a permanent agency, the bill after conference with the Senate, created a temporary agency whose authorization expired in 1955. A series of hearings by the House Select Committee on Small Business demonstrated the need for extending the life of the Administration for at least two more years.[8] The Committee recommended the extension as well as the Administration having the power to determine which firms are small businesses, continue its power to certify the competency of small businesses to carry out federal government contracts, and further decentralize its loan processing (including to the point of providing a differential interest rate based on locality).[9] Ultimately,

[5] Id. at 105.

[6] Id. at 131. The SDPA was not empowered to claim raw materials on behalf of small manufacturers—a critical drawback given wartime restrictions on access to critical inputs for manufacturing. Id.

[7] H. REP. 2683, 83d Cong., 2d Sess. 3 (1954).

[8] H. REP. 1045, 84th Cong., 1st Sess. 3 (1955).

[9] Id. at 13–14.

Congress made the agency permanent in 1958 and the Administration kept many of its same powers.[10]

A series of hearings by the House Select Committee on Small Business highlighted the problems faced by small businesses in obtaining long-term loans and equity financing. The hearing particularly noted that many small businesses were too large for the limited loan assistance provided by the Administration under the Small Business Act but were not sufficiently large to sell stock.[11] Senator Lyndon Baines Johnson (D–TX) (who was the Senate Majority Leader) introduced legislation authorizing the Administration to purchase debentures from investment companies that invested private and public capital in small businesses. The bill also authorized the creation of state and local development companies for the purpose of providing long-term debt financing at levels substantially higher than those available under the Loan Policy Board's management of lending under the SBA. One month after making the Administration permanent, President Eisenhower signed into law the Small Business Investment Act of 1958.[12]

President Johnson and candidate Richard Nixon both recognized that growth of the small business community could help fight poverty and improve low-income communities.[13] The Administration then designated loans to low-income areas. President Johnson also directed that the Administration's authority to accept prime contracts from other government agencies be revised to focus on assisting minority business owners in obtaining contracts from federal agencies.[14] President Nixon dramatically expanded the operation of this program to assist minority-owned small businesses.[15]

Small businesses were not solely concerned with access to money and contracts. Unlike large businesses that are able to hire Wharton School MBAs or management consulting firms, small businesses did not have the resources to develop a cadre of internal managers or hire external advisors. The Administration stepped into that breach in 1964 by creating the Service Corps of Retired Executives who volunteered to assist sick companies fix their management problems.[16] That technical assistance capacity was then supplemented by the creation of Small Business Development Centers which utilized the skills of college and university business schools to assist small business owners.[17]

Fundamentally, the various programs created by the SBA and SBIA were designed to try and equalize the inherent scale advantages of large businesses by providing small businesses with financial, contractual, and advice opportunities that they otherwise would not receive. As the United States economy moved away from its industrial revolution (i.e., manufacturing) core, the Administration focused its attention on the broader class of small businesses

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[10] Pub. L. No. 85–536, 72 Stat. 384 (1958).

[11] J. BEAN, BEYOND THE BROKERED STATE 157–58 (1996).

[12] Pub. L. No. 85–699, 72 Stat. 689 (1958).

[13] J. BEAN, BIG GOVERNMENT AND AFFIRMATIVE ACTION 63 (2001). Even William F. Buckley, Jr. approved of the concept of "black capitalism" as the mechanism needed to fight poverty. Buckley, On Black Capitalism, NATIONAL REVIEW 296 (March 25, 1969).

[14] J. BEAN, BIG GOVERNMENT AND AFFIRMATIVE ACTION 66 (2001).

[15] Id. at 91–94; President Reagan also dramatically increased the utilization of 8(a) contractors by the federal government. Id. at 113–14.

[16] Id. at 38.

[17] Id. at 108.

than manufacturers. The Administration inattention to manufacturers was to change during the 108th Congress.

II. A CRISIS IN UNITED STATES MANUFACTURING

During the last three years, over 2.7 million manufacturing jobs have been lost in the United States. Manufacturing employment represents a mere 14.8 percent of jobs in the United States economy—the lowest levels ever recorded in the United States. Manufacturers operated at only 74.4 percent capacity—the lowest levels since the depths of the recession in the early 1980's.

These statistics are particularly troubling for small manufacturers. More than 95 percent of all manufacturers are small businesses. They represent more than $1 trillion dollars in receipts in any given year. Small manufacturers also make vital products that are then utilized by others in the economy, such as tools, dies, molds, and specialty metals. Manufacturing is vital to the success of the American economy because a healthy manufacturing base pays wages 20 percent higher than other small businesses. In turn, the additional income provides workers with the added means to purchase goods and services supplied by other small businesses, such as restaurants, hotels, and automobile dealers. The Committee considers that small manufacturers are a key component to long-term economic security.

The Committee recognizes that official Washington pays little heed to manufacturing. For example, Chairman of the Federal Reserve, Alan Greenspan, recently testified that he was not particularly troubled by the loss of American manufacturing jobs as long as there is access to foreign producers of manufactured goods and workers maintain their income.[18] The Administration also has strayed remarkably far from its roots as a supporter of the American defense industrial base. Policies have been developed, such as the initiation of certain low-dollar value loans, to spur startups by retail and service establishments rather than utilize scarce resources for higher value loans to manufacturers. The Administration also has not worked out more effective contracting assistance programs for small manufacturers or done a better job of coordinating assistance with the Department of Commerce's Manufacturing Extension Partnership.

The Committee believes that long-term national security requires a healthy economy. Economic vitality cannot occur in a post-industrial society despite the protestations to the contrary by Chairman Greenspan. The Committee determined that the programs authorized by the SBA and SBIA should be reexamined during the reauthorization process to see whether improvements can be made that would assist small manufacturers. The outcome of that examination is reflected in the many changes made to the SBA and SBIA to assist small manufacturers.

III. BAD DRAFTING MAKES WORSE GOVERNMENT

As the Committee began its intensive examination of programs authorized by the SBA, the Committee came to the realization that

[18] Monetary Policy and the State of the Economy: Hearing before the Committee on Financial Services of the House of Representatives, 108th Cong., 1st Sess.—(testimony of the Hon. Alan Greenspan) (July 15, 2003).

modification of the SBA alone would not achieve the goal of providing greater assistance to small manufacturers. The SBA was written fifty years ago and has never been completely revised. Accretions have been made to the SBA that creates internal inconsistencies. Even the Administration, the agency implementing the SBA, does not fully understand it. The Committee determined that a complete overhaul was necessary. Some examples of the problems the Committee encountered in its review aptly demonstrate the need for a significant revision to the SBA.

A. Disaster Loans

The Administration's regulations stipulate that a borrower is limited to a maximum of $1.5 million under the disaster loan program. 13 C.F.R. § 123.202(a). However, § 7(b)(6) of the SBA states:

> That no loan under paragraphs 7(b)(1) and (2) shall be made * * * if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster. * * *

The conflict in the regulatory limitation and the statutory limitation stem from the fact that an emergency supplemental appropriation bill in response to flooding in the Midwest provided for an increase in the amount committed to the borrower.[19] However, it remains unclear whether the appropriation directive was for one year or was permanent.[20]

In § 7(b), there are three numbered paragraphs, each starting "notwithstanding the provisions of any other law." There are no other references in three paragraphs to parameters of their application since the provisions contradict each other. Committee staff actually traced each of the provisions to specific legislation and applying the rule of later enacted statute determined that the "notwithstanding any other provision of law" was limited to disasters occurring between specific dates. For the same reason, the Committee staff also concluded that the reference in the supplemental appropriations bill only raising the level of the disaster loan only applied to disasters occurring during fiscal year 1993.

Section 7(b) of the SBA is replete with these sorts of problems and internal inconsistencies as they relate to specific disasters. In many cases, the statutory requirements on the making of disaster loans are more than 30 years out-of-date. The only way to resolve the unintelligibility of the disaster loan program was to rewrite the subsection in its entirety.

B. Small Business Development Centers

The Committee examined the program for small business development centers in an effort to see what changes could be made to provide greater assistance to small manufacturers. The Committee staff then began closely scrutinizing the language of § 21 of the SBA in order to determine what new functions should be given to small business development centers. However, the Committee staff was unable to determine where those new functions would be car-

[19] 103 Pub. L. No. 75, 107 Stat. 739, 740 (1993).

[20] As will be demonstrated, many special rules exist for disaster loans made on or after specific dates and were created by amending the SBA or through some appropriations language. Absent an actual change to the SBA, there is no statute, currently in effect, that provides a limitation of anything other than a statutory cap of $500,000.

ried out because the section did not adequately identify what a small business development center was and conflated the centers with the government entities that ran the centers. To make matters worse, small business development centers serve small business enterprises (under the statutory language of that section) but the SBA only defines a term for a "small business concern." The Committee determined that inserting new requirements into this jumbled mass without rewriting would not be beneficial to achieving the goals of providing greater support to small business concerns and small manufacturers.

C. Associate Administrators

Section 4(b)(1) of the SBA states that the Administrator is "authorized to appoint five Associate Administrators * * * to assist in the execution of the functions vested in the Administration." A perusal of the Administration's telephone directory,[21] reveals that there are 13 Associate Administrators or more than 2.5 times the number authorized by statute. Furthermore, in 1996, the Administrator changed the name of the statutorily-mandated Associate Administrator for Minority Small Business and Capital Ownership Development to the Associate Administrator for 8A/Business Development.[22] Given these findings, the Committee determined that rewriting the entire organizational structure of the agency was needed to ensure that actions taken by subsidiary officers of the Administration were not considered ultra vires.[23]

These are only some of the problems the Committee identified in reviewing the SBA. Other problems also exist. The statute provides for the creation and payments into revolving funds that were eliminated after the passage of the Federal Credit Reform Act.[24] Powers are granted to the Administration; current statutory practice requires powers be delegated by Congress to heads of agencies, such as the Administrator. The sections of the SBA are divided by the powers and additional powers of the Administration rather than by coherent collections of related activities. For example, the technical and management assistance required to be provided to participants in the program established by § 8(a) of the SBA are set forth, not in that section, but rather in § 7(j). Finally, the SBA authorizes programs that have had limited time, such as assistance due to problems related to El Ninõ weather incidents in 1982 and 1983 or the establishment of a commission to study small business enterprise development in Central European countries that had recently thrown off the yoke of the Soviet empire.[25]

For all of the foregoing reasons, the Committee determined that simply accreting more requirements to the SBA would continue the

[21] There is nothing on the Administration's website that provides an adequate organizational chart or explanation of the delegations of authority. The Committee is of the opinion that the Administration's website must prominently display the agency's organizational structure and links to telephone books and delegations of authority.

[22] Even though section 4 of the SBA authorizes the Administrator to create subsidiary offices, nothing permits the Administrator to eliminate statutorily-mandated offices.

[23] Ultra vires actions are those taken by an agency in contravention of a statutory limit on the agency's power. See *Chamber of Commerce of the United States* v. *Reich,* 74 F.3d 1322, 1328 (D.C. Cir. 1996); *United States* v. *16.03 Acres of Land,* 26 F.3d 349, 355 n.l (2d Cir. 1994).

[24] The Federal Credit Reform Act is incorporated in Title V of Pub. L. No. 93–344 and is codified, as amended, at 2 U.S.C. 661a–f.

[25] Considering that a number of these countries, such as the Czech Republic, are being admitted to the European Union, federal government concerns about the health of their small business economies seems somewhat misplaced.

trend of bad drafting leads to worse government. The Committee determined that it was appropriate to overhaul the SBA.[26]

COMMITTEE ACTION

The Committee held three hearings to discuss issues related to programs authorized by the SBA and SBIA. The full Committee hearings were held on February 26, 2003, March 20, 2003, and June 11, 2003.

At the February 26, 2003 hearing, the Administrator discussed the budget request and noted that he was committed to a workforce transformation plan for Administration employees. Other witnesses, such as the National Association of Government Guaranteed Lenders, the Association of Small Business Development Centers, and the Association for Enterprise Opportunities noted that the budgetary requests were inadequate particularly if the Committee still maintained an interest in the Administration's programs being reconfigured to provide greater assistance to small manufacturers.

The March 20, 2003 hearing focused specifically on mechanisms to provide greater financial assistance to small manufacturers. The Associate Deputy Administrator for Capital Access only briefly addressed the issue. The National Association of Development Companies and the National Association of Small Business Investment Companies both requested specific statutory changes that would permit their members to provide additional financing to small manufacturers. The Association for Enterprise Opportunities noted that microloans were too small to seriously assist small manufacturers and that small manufacturers were hurt by limitations on the assistance that microlender intermediaries were permitted to provide. Finally, a representative from Kentucky Highlands Corporation, who owns both a certified development company and a new market venture capital company, requested significant changes in the new market venture capital company program to enable those companies to invest in the manufacturing enterprises that will provide dramatic economic assistance to low-income rural communities devastated by the loss of income in extractive industries.

During the June 11, 2003 hearing, the Committee heard from the Deputy Associate Deputy Administrator for Government Contracting and Business Development and the Associate Administrator for Enterprise Development. Both noted that the Administration is working on efforts to improve federal procurement and technical assistance programs to all small businesses and these changes will benefit small manufacturers as well. Another witness discussed problems in the HUBZone program (particularly as they relate to the purchase of agricultural commodities and the exemption that benefits certain large grain trading firms at the expense of small businesses located in the HUBZone). Two witnesses addressed problems with the 8(a) program and concluded that changes needed to be made particularly as it relates to restrictions on the ability of firms to grow and stay within the program. This is particularly problematic for small manufacturers that tend to have higher capital requirements than service or retail businesses.

[26] It has not gone unnoticed that this year also represents the 50th anniversary of the Administration.

A witness that oversees a small business development center testified about the operations of small business development centers and their current and future capability to serve small manufacturers. The manager of a BusinessLINC program in Tucson, AZ testified about the success that the program is having in southern Arizona supporting supply chain management opportunities between large and small businesses in the United States and for small manufacturers who source goods to large manufacturers operating facilities in northern Mexico. A representative of a micro-lender explained how the technical assistance provided by such lenders, through the micro-loan program and the PRIME program benefit the smallest of manufacturers who start production in shops in their homes. Finally, an operator of a women's business center requested significant changes to the Women's Business Center program.

CONSIDERATION OF H.R. 2802

The Chairman and Ranking Democratic Member introduced H.R. 2802 on July 21, 2003. The Chairman and Ranking Democratic Member then commenced work on further changes that would be incorporated in a Chairman's mark that would constitute an amendment in the nature of a substitute for all of H.R. 2802. Other than the Chairman's mark of an amendment in the nature of a substitute, no other amendments to H.R. 2802 were offered during the markup on July 24, 2003. The amendment in the nature of a substitute for H.R. 2802 was enacted by voice vote at 9:50 a.m. on July 24, 2003.

SECTION-BY-SECTION ANALYSIS

TITLE I

Section 101. State Defined

This section amends paragraph 4 of section 103 of the SBIA to ensure that the definition of state used in the SBIA is the same as that used in the SBA.

Section 102. Small Manufacturer Defined

Changes are made to programs in the SBIA to make more funds available to small manufacturers. Currently, no definition exists for the term "small manufacturer." This section adds a definition that is consistent with the definition of the term "small manufacturer" in the amended SBA.

Section 103. Maximum Participating Securities Rate

Title III of the SBIA authorizes the Administrator to license venture capital companies whose primary investment will be in small businesses. After contribution by private investors, the small business investment companies (SBICs) are entitled to receive "leverage" from the government at a ratio not to exceed 300 percent of the private capital contributed to the SBIC. The federal government obtains money for the leverage by the sale of trust certificates to firms that typically purchase government-guaranteed bonds. Pursuant to the Federal Credit Reform Act, the Administrator is required to calculate the subsidy rate for the program, i.e., the

amount of money in any given year from fees and appropriations that are required to cover potential losses on the trust certificates.[27]

Since 1996, the SBICs have been charged a fee that is determined to be sufficient to cover any possible payouts on the trust certificates by the federal government. Different fees exist for participating debentures and participating securities. These fees need to be adjusted from time to time so that no appropriations are needed to pay off the trust certificates. The amount of the fee differs depending upon whether the SBIC has issued debentures or securities.

The fee for SBICs issuing securities (also called the "participating security rate") is currently set at 1.38 percent per year. In order to keep the subsidy rate at zero, the rate must be changed to a minimum of 1.454 percent. The reason for the increase is unrelated to potential loss by SBICs. Rather, the fee charged by the Administrator is tied to the 10–year Treasury bond rate. If that rate falls, the fee charged to SBICs utilizing participating securities must rise in order to keep a zero subsidy rate. Absent the change in the participating securities rate, losses by SBICs (and therefore to holders of trust certificates) would require appropriations.

SBICs play a vital role in this country's economic future. Companies such as Intel, Apple Computer, Federal Express, and Outback Steakhouse received investments from SBICs. The Committee believes that it is important to maintain the viability and vitality of the SBIC industry because SBICs will be at the forefront of providing the capital necessary to revitalize small manufacturers and low-income areas. Therefore, the Committee determined that raising the participating security rate to 1.7 percent would be most appropriate in giving long-term stability to the industry. The Committee notes that the Administrator, in a letter dated July 18, 2003, supports the increase to 1.7 percent.

Section 104. Maximum Leverage for Buying Operations

SBICs are limited in the amount of leverage that they can obtain from the Administrator. The current limit is $90,000,000 subject to modification by the consumer price index and some other determinations by the Administrator. The Committee is of the opinion that the consumer price index does not represent an adequate reflection on the cost of capital or the ability of SBICs to raise money.

Section 104 amends section 303(b)(2) of the SBIA through elimination of indexing an SBIC's maximum available leverage. Instead, section 104 imposes statutory limits on the amount of leverage available to one SBIC and to two or more SBICs that are under common control. The levels are raised to $115 million for a single SBIC and $150 million for two or more SBICs under common control. Higher limits of $150 million and $185 million apply if more than the 50 percent of the dollar financings[28] of the SBIC are made to small manufacturers. The Committee took this approach with the expectation that higher leverage limits would provide additional monetary incentives for SBICs to invest in manufacturing

[27] The losses on trust certificates would occur if the underlying investments made by an SBIC failed.

[28] Dollar financings is the total amount of funds made available by a SBIC to a small business concern.

firms. The Committee also believes that capital needs of manufacturers tend to be greater than firms in services or retail sectors and therefore higher leverage limits are appropriate.

The Committee adopted this approach to generating incentives for investment in manufacturing rather than creating a whole new class of SBICs whose focus is manufacturing. Experience with narrowly-tailored SBICs (specialized SBICs that invested in socially and economically disadvantaged firms) demonstrates that legislative classifications are not necessarily ideal in determining how private capital will best be invested.

Under the Committee's approach, two or more licensees that are under common control can obtain increased leverage amounts. The Committee imposed a deadline of ten days for the Administrator to determine when two licensees are commonly controlled. That deadline gives the Administrator two business weeks to make a decision on common control. Given the requirement that the agency will promulgate regulations on this standard, the Committee does not believe that decisions can be made in the ten-day period. The ten-day period only applies for a determination of a common control of two SBICs that already have been approved by the Administrator and does not apply to any initial determination to license a SBIC.

Section 105. Maximum Aggregate Amount of Leverage

This section represents the technical conforming change needed to strike the existing limits on maximum available leverage that the Committee sought to make in section 303(b).

Section 106. Investments in Smaller Enterprises

Licensed SBICs are required to invest a portion of their capital and leverage in smaller enterprises.[29] Those limits are tied to whether the SBIC has more or less than $90,000,000 leverage. Since the bill eliminates those requirements, the Committee simply substituted a requirement that 25 percent of the dollar financings be in smaller enterprises. The Committee concluded that the 25 percent figure represents sufficient incentive to invest in smaller firms without unduly restricting the decisionmaking process of the SBIC's managers. Furthermore, the Committee does not believe that this requirement is overly restrictive because it is not tied to specific industry categories. Nor does the Committee believe that this requirement will reduce the amount of investment in manufacturers. There are sufficient numbers of small manufacturers that would fall within the SBIA's definition of a "smaller enterprise."

Section 107. Actions of Administrator with Respect to Capital Impairment

Capital impairment is currently defined as the point at which the Administrator determines that providing additional leverage to the SBIC would place the government's additional leverage at risk, i.e., loss without potential for recoupment. The resolution of issues related to capital impairment goes to the core of how the Administration and the industry view the venture capital industry.

[29] Smaller enterprises are those small businesses with limited net worth, net income, and still meet the size standards established by the Administrator pursuant to 3 of the SBA. 15 U.S.C. § 662(12).

The Administration's regulations on capital impairment enable the Administrator to stop issuing leverage to a capitally-impaired SBIC.[30] In addition to cessation of issuing leverage, the regulations also authorize the Administrator to stop a SBIC from investing its own capital in small businesses.

The Administration's regulations view the private capital in a capitally-impaired SBIC as additional "collateral" against loss by the SBIC. The SBIC industry deems the capital to be owned by the private investors and any government losses should either be accepted as part of venture capital or be recovered through liquidating the investments made by the insolvent SBIC.

The Administration's view of capital impairment does not fully comport with the principles underlying venture capital investment. The Committee believes that prohibiting the investment of private capital after capital impairment will reduce the probability that SBICs can find investors because those private investors view their capital contributions as their own money. The Committee accepts the position that a string of losses by a SBIC does not necessarily extrapolate directly to concluding that the next investment also will be a failure. For example, a SBIC that invested in six Internet start-up companies during the Internet bubble during the 1990s and then lost their investment does not mean that the management is bad. If the SBIC had additional available private capital and invested in a home construction firm in 2001, that final investment might have spectacular returns that wipe out all the losses incurred by the failure in the technology sector. Preventing the SBIC from making that investment ensures that the Administration will not be able to maximize its profits—only minimize its losses. The Committee does not believe that represents a sound approach to venture capital.

The Committee understands that the Administration views the private capital as potential collateral for the tiers of leverage. Furthermore, the Committee recognizes that the language may lead the Administrator to slow the issuance of leverage to determine the success of the SBIC. While the Committee is of the opinion that such delays should not happen because this is a venture capital program and risk is inherent to the program, the Committee also understands that the Administrator has a responsibility to protect the taxpayer and may be less willing to issue leverage.

The Committee determined that the best approach to maximize returns to the government would be to allow the SBICs to do what they do best—invest their private capital in small businesses. Under the SBIA and the Administration's regulations, the government is the first payee on any profits from an investment. A capitally-impaired SBIC nevertheless might use its private capital to find the next Outback Steakhouse or Apple Computer. The Committee's view is that investment of private capital (without additional leverage) may prove more beneficial to the government's financial position, in the long run, than trying to use the private capital as a source of collateral to protect the government. Therefore, the Committee adopted the approach that prohibits the Ad-

[30] The SBIC industry does not dispute the need to cease the provision of additional leverage to a capitally-impaired SBIC.

ministrator from restricting the investment of private capital in a SBIC that is determined to be capitally-impaired.

Section 108. Conditions for Distributions

The SBIC program provides that the Administration gets first priority in any repayment and distribution of profits. Allocation of payments is currently made based on the leverage provided by the Administrator to the SBIC. The current allocation process does not necessarily get money repaid to the Administration as quickly as it could be since there is no allocation between principal and interest payments.[31] Nor does it ensure that investors can quickly get a return on investment.

The Committee believes that a more business-like approach to distributions is necessary to ensure that SBICs represent a viable alternative for venture capital investors. This is particularly important given the Committee's belief that SBICs can play a critical role in providing capital to small manufacturers.

Section 108 modifies the current standards on distributions set forth in § 303(g)(9) of the SBIA. First, it authorizes a SBIC (backed by participating securities) to distribute the balance of its income to private investors if there are no outstanding priority payments without first having to calculate and distribute amounts profit-sharing amounts to the Administration pursuant to paragraph (11).[32] Second, the Administrator will be required to allocate any distributions made to it pursuant to revised paragraph (9) as repayment of the principal of outstanding participating securities or debt before allocating to the profit payments made pursuant to paragraph (11).[33]

Second, the amendment adopts for all distributions the rule set forth in existing subparagraph (9)(A) that distributions will be based strictly on a ratio of existing private capital to leverage. The Committee believes that this is a simpler and fairer method of making the distributions required under this paragraph. Finally, the Committee recognizes that SBICs also make money from management fees they charge. The amendment requires any regulations issued to implement the revised distribution procedures should not unreasonably reduce these management fees because of the reduction of combined capital (i.e., the pay-down of participating securities and debt in a quicker fashion than would otherwise occur).

Section 109. Modification of Aggregate Limitation

The SBIA prohibits SBICs from obtaining more than 300 percent leverage of private capital. The Administration interprets this re-

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[31] The problem facing the SBIC industry is akin to the problem facing a homeowner with a conventional mortgage. In the early years of the mortgage, most of the payment is not a reduction in principal but represents repayment of interest expenses, i.e., the homeowners payment for use of the lender's money. It is only in later years in which the principal is actually being repaid.

[32] Prioritized payments are the value (on an annual basis) of the redemption price of the participating security times the rate of interest on the Administration's trust certificate issued to back the participating security. Under § 303 of the SBIA, these payments must be made before any distributions are made to investors. They are the SBIC equivalent of dividends on preferred stock or senior debt.

[33] In essence, this forces the SBIC to pay down existing "debt" rather than make "interest" payments. Alluding to the homeowner analogy in note 31, supra, it is akin to a homeowner reducing the length of the mortgage by either making more than 12 payments per year or refinancing to a shorter mortgage.

quirement to include any loan issued pursuant to § 7(a) of the SBA to which the SBIC cosigns as a guarantor of the loan. This can reduce the leverage made available to SBICs even though the investment of the leverage is not necessarily at risk through the co-signing of a loan. The Committee determined that, in an effort to maximize the amount of capital available to SBICs (especially with respect to investment in small manufacturers), this section eliminates loans issued pursuant to § 7(a) of the SBA from the calculation of the aggregate leverage limits.

Section 110. Notice and Comment Rulemaking

The Administrative Procedure Act exempts regulations relating to government grants, loans, and benefits from the notice and comment requirements applicable to agency rulemakings. The Administration has issued a regulation requiring the agency to conduct notice and comment rulemaking for rules that would otherwise be exempt. 13 C.F.R. § 101.108. Pursuant to *Chrysler Corp.* v. *Brown*, 435 U.S. 519 (1978), the voluntary provision of additional administrative protections by an agency beyond those mandated by Congress is not enforceable in court.[34] Thus, a successor Administrator may simply repeal the restriction. The Committee believes that regulations issued under SBIA should be subject to notice and comment rulemaking. The public procedures embodied in the Administrative Procedure Act are designed to inform the public of changes and educate the agency on the impact of proposed changes on affected small businesses.[35] The Committee believes that the Administrator needs the input of the small business community when issuing regulations under the SBIA. Therefore, § 110 simply codifies an existing practice and will prohibit future Administrators from modifying this requirement. Finally, by mandating the requirements in the SBIA, adversely affected entities will be able to challenge regulatory issuances from the Administrator if there was a failure to comply with notice and comment rulemaking.

Section 111. Low-Income Geographic Area Definition

The New Market Venture Capital Company program was created to provide incentives to invest in small businesses located in low-income areas. The program was supposed to operate in conjunction with a tax credit for investments in such low-income areas. However, the tax credit defines eligibility based on 80 percent of median family income while the SBIA defines a low income area as one with 50 percent median family income. The Committee determined that the New Market Venture Capital Company program would function better if the definition of low-income area in the SBIA is identical to that in the tax code. Therefore, section 111 makes the necessary change in the SBIA by raising the definition of low-income to 80 percent of median family income.

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[34] Thus, the basic requirement that an agency is required to comply with its own rules does not apply when the agency provides administrative protections beyond those mandated statutes. See *Cubanski* v. *Heckler*, 781 F.2d 1421, 1428 (9th Cir. 1986), vacated as moot on other grounds sub. nom. *Bowen* v. *Kizer*, 485 U.S. 386 (1988).

[35] E.g., *Chocolate Manufacturers Assn* v. *Block*, 755 F.2d 1098, 1103 (4th Cir. 1985).

Section 112. Unmet Equity Investment Needs of Certain Small Manufacturers

The health of the small manufacturer sector is of significant importance to the Committee. In many instances, manufacturers, particularly those in low-income and rural areas have a difficult time attracting sufficient capital for the investment they need in plant and equipment. The Committee is of the opinion that New Market Venture Capital Companies can play a role in providing that funding. Therefore, the Committee added small manufacturers to those businesses whose capital needs are not currently being met through other programs authorized by the SBIA.

Section 113. Participation Agreement Requirements

The Administrator approves New Market Venture Capital Companies by entering into participation agreements with each company that meets certain criteria. Given the Committee's perspective that New Market Venture Capital Companies can provide necessary capital to small manufacturers, the Committee believes that the Administrator should do more to encourage New Market Venture Capital Companies investment in small manufacturers. Section 113 requires the Administrator to approve (i.e., enter into a participation agreement with) at least one New Market Venture Capital Company that primarily invests in small manufacturers. The Committee intends that the New Market Venture Capital Company will have at least 50 percent of its investment in small manufacturers to qualify under this section.

Section 114. Final Approval Requirement

The New Market Venture Capital Company program operates in two stages—a conditional stage and a final stage. Current law provides that the conditional stage may last for a period not to exceed two years but gives the Administrator the discretion to make it less than two years. The venture capital market has had difficulty attracting investors since the collapse of the Internet bubble. New Market Venture Capital Companies must raise money in this depressed venture capital market. Their difficulties are compounded by the restrictions on the areas where they must invest. Thus, the Committee believes that New Market Venture Capital Companies should get the full two years to move from conditional to final stage. Section 114 makes that conforming change in section 354(d) of the SBIA.

Section 115. Conditionally Approved Companies

New Market Venture Capital Companies do not solely invest capital in small business concerns. They also are required to provide technical and management assistance to the companies in which they invest.[36] Current law does not authorize the Administrator to make technical assistance grant money available to conditional-stage New Market Venture Capital Companies. Yet, small business concerns need the operational assistance at the earliest phase of their development, i.e., during the conditional stage of the New Market Venture Capital Company program. Given this need, it

[36] In this sense, the New Market Venture Capital Companies are similar to lenders under the microloan program authorized pursuant to § 7(m) of the Small Business Act.

makes abundant sense to ensure that conditional stage New Market Venture Capital Companies have the resources to provide the operational assistance that small business concerns would need.

The Committee adopted the approach of authorizing the Administrator to provide operational assistance grants not to exceed $50,000 to New Market Venture Capital Companies during their conditional stage of development. This would allow them to focus on raising money for investment while at the same time providing small business concerns with critical assistance at early stages of development. The Committee also requires that the funds be repaid if the New Market Venture Capital Company does not receive final approval. Finally, § 115 requires that the Administrator reduce the overall technical assistance grant money made available to New Market Venture Capital Companies by the amount of grants received during the conditional stage.

Section 116. Applications for New Markets Venture Capital Companies

A general concern of the Committee is the amount of documentation required to obtain approval of funding under programs authorized by the SBIA is rather extensive. The Committee believes that the concerns applying under these programs should expend far less resources on government applications and more on productive activities. This is particularly true with respect to New Market Venture Capital Companies. Monies expended on paperwork reduce the available resources for investment or training. Therefore, the Committee's bill directs the Administrator to develop a standard application form for New Market Venture Capital Companies within 60 days of enactment. Furthermore, the Committee's bill mandates that the forms simply cannot duplicate existing forms but must be redesigned to capture necessary information while reducing the total paperwork burden and the costs associated with completing such paperwork. Since the Administrator has successfully undertaken such efforts in the past with respect to loans issued pursuant to § 7(a) of the Small Business Act, the Committee believes that a similar effort can be successful with respect to the documentation requirements for the New Market Venture Capital program.

Section 117. Authorization of Appropriations

Section 117 authorizes appropriations for New Market Venture Capital Companies. It extends the authorizations to fiscal years 2004 and 2005.[37] Furthermore, it provides for additional authorizations of funds for both debentures[38] and technical assistance grant monies.

Section 118. Repeal of Lease Guarantee Authority

The Administrator does not utilize current authority to back the lease of commercial property or the installation of pollution control equipment pursuant to Title IV of the SBIA. The Committee therefore eliminated that authority. However, there may be existing

[37] The Committee has taken the approach that programs under the SBIA or SBA should be authorized either permanently or for two years. Typically programs that require an appropriation of funds (beyond normal agency operating funds) are then authorized for two years.

[38] The Administrator backs investments in New Market Venture Capital Companies by issuing debentures sold to investors that are backed by the full faith and credit of the United States.

guarantees that remain outstanding. Therefore, the bill includes a savings clause insuring that the repeal of the authority in § 118 does not alter any previously issued guarantee or eliminate the fund into which repayments of such guarantees are made.

Section 119. Amendment of Congressional Findings Relating to State Development Companies

Title V of the SBIA authorizes the Administrator to sell debentures that back long-term loans made by qualified state and local development companies (CDCs)[39] for the purpose of economic development. Economic development is measured by the number of jobs created per dollars loaned.[40] Section 119 adds an additional finding—CDCs will be of assistance in helping small manufacturers to expand.

Section 120. Qualification of State Development Companies

Section 501 of the SBIA provides the purposes for which CDCs are authorized to make loans. Subsection 501(d) delineates certain public policy objectives that do not require a loan to meet the job creation objectives specified by the Administrator.

One of those public policy objectives is rural development. The SBIA does not define a rural community so the Committee determined that a definition was appropriate and adopted the current definition utilized in a panoply of programs overseen by the Department of Agriculture. Those programs define a rural community as one in which the population is less than 50,000 and the community is not located within a standard metropolitan statistical area. If the purpose of federal funds (whether direct or indirect) is to foster growth in rural areas, good public policy dictates that the definition of "rural" be consistent for all federal agencies involved in rural development, including the Administration.

The Committee also is concerned that the current job creation standard of one job for every $35,000 is realistic in the context of manufacturing. In fact, competitiveness of America's small manufacturers may dictate that they invest in equipment that makes their facilities more efficient and that, at least initially, may result in the loss of some jobs. Yet, as the Committee has already explained, resuscitation of America's manufacturing base is a critical component of this legislation. Given the capacity of CDCs to make higher value loans than through other programs authorized by the SBA, the Committee is of the opinion that the job retention or creation criterion is not appropriate for loans to small manufacturers. Therefore, § 120 of the bill adds, as a public policy goal, increasing the productive capacity of small manufacturers. Thus, loans made by CDCs will not need to meet the job creation criterion for their loan portfolios as mandated by section 501 and set forth in the Administration's rules.

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[39] These companies are known by their more familiar name of certified development companies or CDCs and the more common terminology will be used in this report unless otherwise specified.

[40] The requirement is one job created or saved for every $35,000 guaranteed by the Administrator. 13 C.F.R. 120.861.

Section 121. Job Requirements

As already noted, the Administrator has promulgated regulations, pursuant to § 501 of the SBIA mandating that a CDC loan must create or save one job for each $35,000 in guarantees made by the Administrator. This standard has not been revised since it was adopted in 1990. The standard clearly does not reflect inflation or the dramatic increases in productivity that have led to higher wages for all employees. The Committee believes that the standard needs to be revised to take account of the changes in the economy during the past 13 years. Therefore, section 121 statutorily raises the job creation standard to one job for every $50,000 in guarantees. The Committee feels that this more accurately reflects the current wage scale in the country as well as taking into account inflation.[41]

The Committee recognized that manufacturing requires greater capital investment than other businesses. As already noted, such investment may lead to higher productivity for small manufacturers and therefore fewer jobs created per investment. The Committee did not want to prejudice the ability of CDCs to fund projects that would assist small manufacturers. Therefore, the Committee adopted a standard in § 120 that authorizes CDC loans to small manufacturers if the project creates one job for each $100,000 of guarantee.

CDCs do not need to meet job creation standards for individual loans if the loan is used to further one of the public policy objectives in section 501(d). The Committee modified that requirement slightly by exempting a particular project from the job creation standards if the project was meeting a public policy objective if the CDC's overall loan portfolio creates one job for $50,000 in guarantees. This change conforms to the Committee's approach that the current Administration regulations on job creation simply do not reflect current economic conditions.

Since the basic premise of loans made pursuant to Title V of the SBIA is to encourage economic development, the Committee determined that it made sense to establish a different standard for job creation in economically-depressed areas or places with unusually high wage requirements. The Committee believes that CDCs should be provided more leeway in creating jobs in economically-depressed areas and Alaska and Hawaii.[42] As a result, the bill establishes a more lenient job creation standard of one job per $75,000 of guarantee in certain areas. The Committee simply adopted the Administration's regulation that labor surplus areas, state-designated enterprise zones, empowerment zones, enterprise communities, and labor surplus areas represent economically-depressed areas. The bill also authorizes the Administrator to promulgate regulations designating other areas, be they of unusually

[41] The Committee determined that it would be overly complicated to index this job creation standard for a variety of reasons. First, a bright-line test is easy for both the agency and the CDC to use. Second, the Committee remains unsure what the appropriate standard would be to index—the consumer price index, the producer price index, change in United States labor productivity, or some other standard. Each economic standard and index will have its own benefits and drawbacks. Given the absence of one measure representing a clearer standard than another, the Committee determined that ease of certainty outweighs the problems associated with developing a job-creation standard that will accurately reflect changes in the economy.

[42] Due to higher costs of living, wage scales in Alaska and Hawaii are generally higher than those in the continental United States.

high wages or economically troubled regions, for this more lenient job creation standard.

Given the importance of small manufacturing to economic development, the Committee excluded loans to small manufacturers from the calculations needed to determine whether a CDC's loan portfolio meets the overall job creation standard of one job per $50,000 of guarantee or the $75,000 standard for high-wage and economically-depressed areas. The Committee intends that the public policy goals set forth in section 501 should be accomplished without reference to job creation for small manufacturers. The Committee recognizes that, given the exclusion from calculations of small manufacturers, the Committee did not have to specifically cite assistance to small manufacturers as a public policy goal. However, the Committee determined that it was necessary to recognize the significant role that CDCs can play in the financing of small manufacturers and thus set small manufacturing out as a public policy goal even though the bill excludes small manufacturing from inclusion in the loan porfolio calculations for compliance with public policy goals. This recognition also is important because the Administrator is authorized to guarantee up to 50 percent of a project's value if the loan is being made to carry out one of the public policy goals as set forth in § 501.

The bill also authorizes the Administrator to waive any of these job creation standards when appropriate. The Committee expects that the Administrator will promulgate regulations specifying when the job creation standards will be waived. However, the bill does not authorize the Administrator to waive the exclusion of small manufacturers from the overall loan portfolio calculations. Again the Committee reiterates the finding that assistance to small manufacturers by CDCs should not be undermined by any action of the Administrator.

Section 122. Small Business Concern Loan Limitations

The Committee raised all of the loan limitations for CDCs because they had not been raised in many years and the long-term financing needs of small businesses were not being met by loans that did not exceed the thresholds for loans made pursuant to § 7(a) of the SBA. Raising the loan limitations has two effects. First, it signifies the Committee's recognition that Title V of the SBIA and § 7(a) of the SBA has very different purposes in mind. Second, an increase in the threshold allows more effective economic development projects to be funded by CDCs.

The Committee believes that the increases to $2,000,000 for regular projects, $2,500,000 for public policy goal projects, and $4,000,000 for manufacturers will provide significant new financial inputs to small businesses in general and to small manufacturers in particular. The Committee intends that higher $4,000,000 limitation apply to small manufacturers even though such business concerns are also listed as a public policy objective of the revised SBIA.

Due to limitations on the total amount that the Administrator may commit to any one borrower, CDCs often are restricted in making loans to small business concerns that have loans guaranteed pursuant to § 7(a) of the SBA. Similarly, guaranteed lenders often cannot make loans to small business concerns that have debt

issued by a CDC. The Committee believes this unduly inhibits the ability of Administration programs to meet the capital needs of small manufacturers. Therefore, the Committee modified the restrictions to permit the Administrator to commit the full amounts of a loan made pursuant to § 7(a) of the SBA and Title V of the SBIA.

Section 123. Approval Requirements

Loans made pursuant to Title V of the SBIA are approved in each individual Administration district office. The Committee has received numerous complaints from both businesses and CDCs that the process of obtaining loan approvals from district offices is both time-consuming and frustrating. The Committee determined that a better approach, as will be discussed elsewhere in this Committee report, is to have centralized processing of loans made pursuant to Title V of the SBIA. This section simply prohibits the Administrator from requiring any other loan approval except as elsewhere provided in Title V of the SBIA.[43]

Furthermore, the section prohibits the Administrator from mandating that SBICs with investment in a small business concern be forced to guarantee a loan made pursuant to Title V. SBICs frequently make investments in small business concerns that also have or will obtain loans from CDCs. The requirement makes sense if the SBIC is actually a majority owner of the small business concern seeking the loan. However, when the SBIC has only a minor interest in the loan applicant, it makes no sense to force the SBIC to guarantee the loan. In other words, the Committee believes that the propriety of the loan should be based on the applicant's ability to repay and not on the guarantee of any investor in the applicant. The Administrator, in promulgating regulations to implement this section, shall take into account the control exercised by a SBIC before requiring it to guarantee a loan as a prerequisite for approval.

Section 124. Effective Date for Termination of Certain Fees

Sufficient fees are charged by the Administration to CDCs so that the subsidy rate for loans made under Title V of the SBIA is zero. In other words, fees charged are sufficient to cover any potential losses if a loan fails without the need for an appropriation to cover the fees. The fees are set to expire on October 1, 2003. This section extends those fees for two years.

The Committee did not extend the fees for any longer period of time because the Administration is working on a developing a model that more accurately predicts the likelihood of loan losses under Title V of the SBIA. Experience dictates that current methodologies overestimate the potential losses to the federal government.[44] Lower losses will allow Congress to reduce the fees charged by the Administration to CDCs without jeopardizing the program's zero subsidy rate. The Committee did not want to lock in guarantee fees for three years and then have to change them to bring them into line with the results from the new econometric model.

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[43] This requirement comports with efforts already being undertaken by the Administrator to centralize processing of Title V loans.

[44] An econometric model replaced the linear extrapolation model for predicting losses on loans made pursuant to § 7(a) of the SBA. The new model reduced the subsidy rate from 1.76 percent to 1.02 percent.

Section 125. Accredited Lenders Program

CDCs are classified into three categories—premier certified lenders, accredited lenders, and all other CDCs. Accredited lenders are required to demonstrate their knowledge of Administration regulations and must have experience in making loans pursuant to Title V of the SBIA. In return, accredited lenders receive expedited processing of loans by the Administration.

Given the changes made in the bill, accredited lenders will be able to make their own decisions on loans if the Administration fails to provide a decision after 5 business days. The Committee also believes that standards for becoming accredited lenders need to be tied to their loan performance rather than other criteria, particularly if they are going to make loan decisions without Administration oversight. The Committee repealed the other standards set forth in the SBIA used to determine whether a CDC qualifies as an accredited lender and substituted a loan performance requirement. The Committee is of the opinion that this performance-based standard is fairer and leaves less to the discretion of the Administrator in classifying CDCs.

The Committee established a minimum requirement that accredited lenders must have loan default rates less than the national average. The only exceptions are: (a) a loan portfolio in which a minimum of 20 percent of the loans are made to small business concerns identified § 501(e)(3) as amended by this bill; or (b) a loan portfolio in which a minimum of 30 percent of the loans are made to small manufacturers.

Achievement of these standards will be determined by the Bureau of Premier Certified Lenders Program Oversight—a bureau within the Office of Lender Oversight that is established pursuant to § 508 of the SBIA as amended by this bill. That bureau also will determine compliance on an ongoing basis for an accredited lender to maintain its status. The Committee does not intend that the failure to maintain such designation have any affect on loans made prior to the Administrator's determination that the CDC is no longer an accredited lender.

Section 126. Premier Certified Lenders Program

The Committee made sufficient changes in § 508 of the SBIA that required the Committee to strike the entire section and replace it with new language. The impetus for this rewrite stems from the Committee's incorporation of H.R. 923 into this bill. That bill authorizes the Administrator to take certain actions with respect to the premier certified lending program that the rest of § 508 delegates to the Administration. To avoid inconsistencies, the Committee substituted Administrator for Administration everywhere it appeared and it was simply easier, as a drafting process to strike and replace the entire section. Furthermore, the Committee was troubled by § 508's continued reference to CDCs even though CDCs are not an entity recognized by the SBIA.[45] These changes did not result in any substantive changes to the premier certified lending program except in paragraphs (6) and (7) of § 508(c).

Premier certified lenders believe that the amount of loan loss reserves currently require that they maintain a reserve of 10 percent.

[45] The SBIA only refers to qualified State and local development companies.

Congress believed that premier certified lenders, who do not have their loans reviewed at all by Administration employees, required higher loan loss reserves. However, experience demonstrates that this loan loss reserve far exceeds the default rate for premier certified lenders. H.R. 923 is incorporated into this bill and the Committee incorporates by reference House Report No. 108–153.[46] The Committee made minor technical changes to H.R. 923 and these are described in this Committee report.

First, the Committee eliminates the pilot project aspect of H.R. 923. The modification of the loan-loss reserve becomes a permanent feature of the SBIA. Of course, the Committee will reexamine this issue when it addresses reauthorization of Administration programs in two years. Thus, a pilot project simply is not necessary.

Second, the Committee makes changes so that the alternative loan loss provisions are self-executing. If the Administrator does not develop the regulations or the Bureau of Premier Lender Oversight within the time specified in subsection (c)(7), the Administrator is required to accept the certification of the premier certified lender that it has complied with the requirements to allow it to reduce its loan loss reserves. The Committee is concerned that, given previous experience with the Administrator's failure to comply with statutory deadlines for promulgating regulations and developing offices, the provisions on loan loss reserves need to be self-executing.

Section 127. Foreclosure and Liquidation of Loans

Industry reveals that the Administration receives about $0.17 on each dollar when it liquidates a loan made by a CDC other than a premier certified lender.[47] In the Committee's view, this return is inadequate. Therefore, the Committee determined that a better approach would be to remove the Administration from the liquidation of CDC loans and turn it over to the CDCs themselves. They have much greater incentive to obtain maximum dollar value on both the guaranteed and unguaranteed portion of the loan.[48]

The Committee authorizes CDCs to elect whether each individual CDC wants the authority to conduct its own liquidations. The Committee rejected the approach to simply turn over the liquidation process to the CDCs because smaller CDCs might not have the resources or expertise to conduct or oversee loan liquidations. Nothing in the approach adopted by the Committee requires that CDCs perform the liquidations with full-time employees of the CDC. The Committee fully expects that many CDCs will retain law firms and property management firms to perform the functions of liquidation. The Committee expects that CDCs will work closely with these and other experts in developing the liquidation plan that must be submitted to the Administration.

Each CDC then will have to make an election upon enactment and then each year thereafter. Once an election is made to liquidate or not liquidate, that election is valid for the entire year and

[46] House Report 108–153 provides a section-by-section analysis of the changes made to the loan loss reserve provisions applicable to premier certified lenders. The explanation contained in that report adequately explains those changes and the Committee sees no reason to reiterate them in this report.

[47] Premier certified lenders perform their own liquidation. Nothing in the Committee's bill changes that authority.

[48] Loans made pursuant to Title V of the SBIA do not receive 100 percent guarantees. Rather, the Administration's guarantee of the debentures only guarantees between 40 percent and 50 percent of a project.

covers any new loans that must be liquidated during that year. Election to liquidate or not liquidate has no effect on the liquidation decision made in a prior year. Thus, a CDC that elects to not liquidate during a year will continue to liquidate any loans from a prior year if the CDC had elected to perform such liquidation in the prior year and the liquidation process has not concluded.

The Committee's bill provides that the authority delegated to the CDC is the same authority that the Administrator has to liquidate loans. CDCs interested in liquidating loans informed the Committee that the biggest problem they face is their lack of authority when dealing with a non-performing loan. The Committee's approach provides CDCs interested in performing their own liquidations the necessary authority. A CDC need not obtain approval from the Administrator to liquidate a loan.

The Committee recognizes that liquidation conducted by a CDC can have legal consequences to the Administration. Therefore, the bill requires CDCs to provide a plan of liquidation for a loan once the CDC determines that it must liquidate the loan. The Administrator is then authorized to prohibit any action in the liquidation plan if the action will have a serious adverse effect on the management of the Administration's activities or affects the legal rights of the Administration or other parts of the federal government. The Committee expects that this authority will be used sparingly and will not be used to prohibit the normal actions taken during liquidation needed to recoup as much from the defaulted loan as possible. Thus, a liquidation plan that may run afoul of regulations issued by the Federal Trade Commission on debt collection will subject the CDC to any potential liability and should not be a reason for the Administrator to prohibit the CDC from taking action to liquidate. On the other hand, if the CDC takes a position that forces the termination of a federal contract without approval of the contracting agency, the Committee would expect the Administrator to prohibit such action to protect the United States.

The bill provides one general exception to the discretion provided to CDCs to conduct liquidation. A CDC is prohibited from committing the Administration to purchase additional indebtedness secured by property that is subject of a defaulted loan without written approval of the Administrator. The Committee adopted this approach in order to protect both the Administration and the taxpayer. The bill also provides that the Administrator be required to make a determination on the request to purchase additional indebtedness within 7 calendar days. The Committee selected 7 days as the appropriate balance between providing the Administrator with sufficient time to review the request and not unduly delaying the ongoing liquidation.

New subsection (e) of § 510 establishes the procedures by which the Administrator shall foreclose and liquidate loans. The general approach taken by the Committee is that Administration foreclosure of defaulted CDC loans has been inadequate and therefore mandates that the Administrator contract that service out to qualified entities.[49] During the 1980's, the federal government was faced

[49] The Committee rejected the approach of having the CDCs that did not wish to conduct liquidation to contract that process to qualified entities. That approach would then have all CDCs, either directly or indirectly, liquidating and foreclosing on loans. The Committee was notified

Continued

with foreclosing and liquidating failed savings and loans. Congress created the Resolution Trust Corporation to handle the problem.[50] The Resolution Trust Corporation recognized that it needed outside resources to provide estimates of property values, manage abandoned properties, and handle normal and bankruptcy litigation throughout the United States. The Resolution Trust Corporation contracted with a variety of property management companies, auctioneers, appraisal companies, and law firms to maximize the return to the government from failed savings and loans.

The bill provides that the Administrator should select contractors based on their expertise in conducting similar foreclosures, liquidations, and familiarity with bankruptcy laws. The Committee's approach is similar to that undertaken by the Resolution Trust Corporation in handling failed savings and loans during the 1980s. The Administrator is required to contract out foreclosure and liquidation of loans because the Committee believes outside expertise will result in a better return on liquidated assets than the government currently receives. To increase the incentive to maximize returns on liquidated assets, the Administrator's contracts are required to grant contingencies fees of 5 percent for recovery of at least 50 percent of the value of the loan and 10 percent for recovery of at least 75 percent of the value of the loan. These incentives are in addition to reimbursement for costs of the contractor, i.e., salaries, expenses, and overhead.[51] Again this approach is similar to the incentives provided by the Resolution Trust Corporation to its outside contractors.

In selecting contractors, the Administrator's discretion is restricted in two ways. First, the Administrator is not authorized to consolidate contracts for liquidation unless the Administrator can demonstrate that costs will be reduced by more than 10 percent or that recoveries will increase by more than 10 percent. This furthers the goal of the President and Committee to prevent contract bundling except when it will be of exceptional benefit to the government. Second, the bill requires that the Administrator select contractors with expertise and experience in loan foreclosure, liquidation, valuation of property, litigation, and bankruptcy law. Source selection should then focus on maximizing recovery on loan value rather than solely on price.

Section 128. Additions to Title V

Section 128 adds three new sections to Title V of the SBIA to address short form applications, centralization of CDC loan processing, and reports to the Committee.

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that there were CDCs that did not have the capability to conduct their own liquidations nor oversee the retention of contractors capable of conducting such liquidations.

[50] The Committee also rejected the approach of creating an entity similar to the Resolution Trust Corporation to liquidate loans made pursuant to Title V of the SBIA. There simply are not a sufficient number of loans that default under Title V of the SBIA to require the creation of a separate enterprise to handle the defaulted loans and certainly nowhere the problems faced by the Government in dealing with the savings and loan crisis of the 1980s.

[51] The Committee expects that the Administrator's oversight of the contracts will ensure that the federal government does not overpay for salaries, expenses, and overhead. For example, the Administration's contracting officers should consult with the General Counsel's office to determine whether law firms are overstaffing, overbilling, and utilizing personnel with greater experience than necessary in providing the service. The Committee expects that contracts will require detailed itemization of costs from professional service firms and that overhead recovery is typically included as part of an attorney's hourly rate.

Applications for loans made by CDCs require substantial information from the applicants. The Committee recognizes that these loans require more information than the typical loan guaranteed by the Administrator pursuant to § 7(a) of the SBA. Nevertheless, the Administrator recognizes that not all 7(a) loans require the same amount of information and instituted a low-doc loan program. The Committee believes a similar approach is appropriate for low-dollar loans made by CDCs. Therefore, new § 511 requires the Administrator to develop a short-form application for SBIA Title V loans of less than $500,000. The Committee further believes that the short-form application should reduce the amount of information required by 30 percent from the amount of data in effect on January 1, 2003. This avoids the Administrator reducing the loan size by modifying fonts or taking other cosmetic changes to alter the loan forms. In making these reductions, the Committee does not expect the Administrator to eliminate information needed to judge whether the loan should be made. The Committee believes that the Administrator can accomplish this objective because of the success of the 7(a) low-doc loan program. As further incentive to meet this goal, the Administrator is required to develop the new loan form within 120 days of enactment or the CDC can use its own forms to submit to the new centralized loan processing until the new low-documentation CDC loan form is available. The Committee fully expects the Administrator to meet the objective and therefore will not be required to process loan forms developed by each CDC.

Current procedures require CDC loans be approved by the District Director. The Administrator recognizes that this process makes no sense and has conducted a pilot project to centralize CDC loan processing. Preliminary results reveal that loan processing has improved dramatically. The Committee believes that it is inappropriate to have CDC loans processed by District Directors. Section 512 creates centralized loan processing, not as a pilot, but as a mandate for all CDC loans. Two processing centers are required—one in federal regions I–V (essentially east of the Mississippi River) and one in federal regions VI–X (essentially west of the Mississippi River). The Committee authorizes the Administrator, as a cost-savings measure, to collocate the CDC loan processing centers at its existing facilities for processing express loans in Sacramento, CA and Hazard, KY. If the Administrator collocates at these existing facilities, it is required to ensure that the reviewers of the CDC loans are not the same personnel reviewing loan applications under § 7 of the SBA.[52]

In processing loans under § 512, Administration personnel are required to approve or deny a loan within 5 business days unless the application is not complete. Administration personnel are required to inform applicant in writing (the writing can be done by facsimile machine or via e-mail depending on the capabilities of the applicant) that the application was received and whether it is complete or not. If the application is incomplete, the Administrator is required to provide, in the same notification of receipt, of new information required to complete the application. The Administrator

[52] The Committee imposed this prohibition because CDC loans are significantly different than the Administration's express loans under the SBA. Greater expertise is required to review the CDC loans and the prohibition on mixing personnel ensures that the commercial loan officers reviewing CDC applications will have that necessary expertise.

may return an application three times for incompleteness (each new submission constitutes a new application with a new 5-day processing deadline and a new requirement to inform the applicant of receipt within 1 business day) three times before the applicant and CDC are authorized to use their own forms. The submission of a form developed by the CDC in no way obviates the Administrator from making a loan decision within 5 business days after receipt of the application. Failure by the Administrator to make a decision within 5 business days authorizes Accredited Lenders under Title V to make loan decisions without obtaining prior approval of the Administrator. Lenders other than Premier Certified Lenders or Accredited Lenders are entitled to make their own loan decisions if the Administrator has not made a decision within 20 business days.

The bill also establishes an appeal process for loan denials. An applicant may appeal a denial to the Regional Administrator for the region in which the CDC is located. A decision, either concurrence or approval of the loan must be made within 3 business days of receipt of the appeal. The Committee expects that regulations implementing the centralized loan processing will require that appeals be made in writing and identify specifically the disagreements between the applicant and the Administration personnel who denied the application.[53] If the Regional Administrator concurs with the denial, then the decision may be appealed to the Deputy Administrator who has a 3-day period to concur with the denial or overturn the denial and approve the loan. The Committee expects that both the Regional Administrator and Deputy Administrator will rely on advice provided by the original officer reviewing the loan, the General Counsel's office, and any other individual that the Regional Administrator and Deputy Administrator believe can provide useful information in reviewing the denial of the loan. A denial by the Deputy Administrator constitutes final agency action for the purposes of the Administrative Procedure Act and subsequent appeal to court. The Committee intends that the aggrieved party for purposes of a challenge is the applicant and not the CDC. The Committee expects that few applicants will have the financial wherewithal to challenge the decision in federal court. Nevertheless, the Committee did not want to foreclose an applicant from challenging a decision in court.

Section 513 requires that the Administrator report semi-annually to Congress on loans made under Title V. This requirement is similar to the reporting requirement for 7(a) loans made pursuant to the SBA. The Committee does not expect that the reporting requirement will be particularly onerous because the Administrator is required to track currency and default rates in an effort to calculate the guarantee fees that will result in a zero subsidy rate.

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[53] The Committee rejected the specification of time limits in which the applicant can appeal to either the Regional Administrator or Deputy Administrator. Should the Administrator impose such requirements by regulation, the Committee expects that the rules shall take into account the time frame in which the applicant will need to develop the documentation and arguments to counter the denial. The Committee expects that an applicant can compile documents and develop sound arguments within 7 calendar days. Therefore, the Committee would expect that any deadline would not be less than 7 calendar days and no more than 14 calendar days.

Section 129. Regulations To Carry Out Amendments to the Loan Program

This section requires the Administrator to promulgate regulations within 90 days after enactment. The bill requires that notice and comment rulemaking be conducted with a minimum of 30 days notice and comment. The Committee expects the Administrator to comply with these procedures without utilizing an interim final rule with request for comments. That procedure undermines the rationale for notice and comment rulemaking. Furthermore, the Committee reminds the Administrator that meeting statutory deadlines does not provide adequate support to forgo notice and comment rulemaking.[54]

The Administrator issued both an advanced notice of proposed rulemaking and notice of proposed rulemaking to address issues related to the management of the development company loan programs. The Committee is concerned about the potential outcome of this rulemaking particularly in light of the numerous changes made to Title V in the Committee bill. Therefore, the bill prohibits the Administrator from completing any rulemaking related to Title V of the SBIA except as needed to implement the changes mandated by the bill. Furthermore, the Committee prohibits the Administrator from undertaking any other regulatory changes until the centralized loan processing has been in operation for one year. Any subsequent changes to the loan programs in Title V of the SBIA should incorporate the changes made by the bill.

Section 130. Conforming Amendments

The SBIA does not recognize the term "certified development company" as a defined term. Therefore, the Committee's bill makes a technical correction and deletes the term "certified" everywhere it appears in section 503 and substitutes the defined term "qualified State or local."

Section 131. Development Company Affiliates

CDCs have a variety of different corporate structures. These organizations create subsidiaries to provide loans guaranteed by the Administration pursuant to § 7(a) of the SBA. For example, CDCs have joined with a credit union to provide the full panoply of loan financing available under the SBA and SBIA. Similarly, some CDCs have established, as separate subsidiaries or affiliated entities, SBICs to provide one-stop shopping for financings under the SBIA. Frequently, these diversified enterprises exist as holding companies in which management decisions for all of the affiliated enterprises are made at the holding company level or at some other centralized point in the management structure of the diversified firm.

The intent of this section is to permit diversified firms, especially if they take the form of a holding company, to continue providing all of their services without necessarily assigning an individual management employee to each affiliated enterprise. The Committee adopted this approach to prevent the Administrator from requiring that each subsidiary authorized to provide financing pursuant to ei-

[54] *E.g., Buschmann* v. *Schweiker,* 676 F.2d 352, 357 (9th Cir. 1982); *United States Steel Corp.* v. *EPA,* 595 F.2d 207, 213 (5th Cir. 1979), cert. denied, 444 U.S. 1035 (1980).

ther the SBIA or SBA must have a management overseer. The Committee is of the opinion that this needlessly wastes financial resources if the decisions are being made at the holding company. The Committee expects that the Administrator will draft regulations to ensure that the centralized management officials will be held responsible for the decisions of the various subsidiary and affiliated entities.

TITLE II

Overall Revisions to the Small Business Act

As already noted in this report, the SBA is not well drafted. The Act represents an agglomeration of ideas that often were simply annexed wherever the drafter of the bill thought there was room for the program in the SBA. For example, § 7(j) authorizes the Administrator to provide technical assistance to contractors and is not a loan program at all. Nevertheless, the authors incorporated the technical assistance to contractors in § 7 rather § 8. In addition, there are numerous internal inconsistencies within the Act itself such as § 21 of the SBA providing assistance to "small business enterprises" while § 3 of the Act defines a "small business concerns." Before addressing the section-by-section changes in the bill, it is necessary to describe the Committee's approach to redrafting the SBA.

A. Change of term "Administration" to "Administrator"

The first major change and the one that required the Committee to reenact much of the SBA by striking and replacing sections of the Act was the improper use of the term "Administration" rather than the more appropriate term "Administrator." Congress delegates power to specifically-designated individuals within the executive branch or to collegial bodies that can only act collectively; Congress does not delegate powers to agencies because an agency is unable to act except through an agency head or delegatee of the agency head. Therefore, the Committee substituted throughout the SBA the term "Administrator" where it was appropriate, i.e., any place in which a delegated power was to be exercised. Thus, the Committee could not simply adopt a technical and conforming amendment that substitutes the term "Administrator" for "Administration" anywhere it is used in the SBA because there are instances in which either the SBA or the revisions made to the SBA by this bill refer to actions or functions of Administration employees. Rather than provide a bill that does a line-by-line replacement of each appropriate use of the term "Administrator" for "Administration," the Committee determined that the superior approach would be to substitute the amended section for the existing section.

B. Reorganization of Sections

The Administrator is mandated to develop a detailed loan management database. This requirement is set forth in section 4 of the SBA, 15 U.S.C. § 633. Yet, almost all of the other powers related to financial management of the loan programs established by the SBA are set forth in § 5 of the Act, 15 U.S.C. § 634. The Committee determined that the SBA should be reorganized so that similar powers and functions are located in within the same section of the

Act. The Committee also determined that, given the frequent references to sections of the SBA rather than the United States Code, it was appropriate in reorganizing sections to reserve certain sections rather than renumber them so that references to specific sections of the Act would remain correct.

Section 4 of the SBA now incorporates all of the general powers delegated by Congress to the Administrator. The powers set forth in §§ 12, 13, 14, and 18 are transferred to § 4 and the definitions in § 18 have been moved to § 3. In addition, § 2(i), related to the restriction on assistance to individuals not legally in the United States was moved to § 4.[55] Revised § 4 also contains the prohibition on assisting businesses that make or distribute obscene products. The Committee also transferred from § 5 to § 4, the provisions concerning the Administrator's authority to sue and be sued. The Committee did not intend that any transfer of these provisions to change any law or practice of the Administration with respect to the transferred authority.

Section 5 now incorporates all of the financial management requirements associated with the loan programs authorized by § 7 of the Act. Thus, the requirement for the loan database was moved from § 4 to § 5. The creation of accounts, currently authorized in § 4(c), has been moved to § 5. The powers set forth in § 17 were transferred to this section and 17 was reserved for the reasons already stated.

A revised section 6 establishes various subsidiary offices of the Administration that are currently contained in section 4 and elsewhere in the SBA and SBIA. This section also includes new existing power to appoint subsidiary officers and employees, including attorneys. The authority currently in § 6 concerning deposits of funds not otherwise in use has been transferred to § 5(b)(2).

Section 7 contains the authorization for various loan programs. Subsection (1) does not relate to loan programs at all but to powers provided the Administrator to assist small business concerns involved in the subcontracting program established pursuant to § 8. The bill moves § 7(j) to § 8.

Section 8 contains a number of programs aimed at assisting small businesses obtain contracts from the Federal Government. However, section 8 also contains a number of programs that provide general technical assistance to all small businesses as well as authority of the Administrator to obtain cosponsorship of various events. The technical assistance programs, including BusinessLINC and SCORE, were moved to new § 12 and the cosponsorship authority was transferred to § 4.

The Committee repealed sections 23 through 25 because they involve programs that were obsolete by their own terms or authorized programs no longer needed. Section 23 was replaced with new language providing the Administrator with greater power to regulate Small Business Lending Companies.

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[55] The Committee has no explanation why a restriction on the Administrator's powers was placed in a section declaring what the general policies of the SBA. The declaration of policies can assist a court in interpreting a statute but are not considered part of the operative provisions of a statute. *Yazoo Railroad Co.* v. *Thomas,* 132 U.S. 174, 188 (1889); *National Wildlife Fed'n* v. *EPA,* 286 F.3d 554, 569 (D.C. Cir. 2002); *Lehigh & New Eng. R. Co.* v. *ICC,* 540 F.2d 71, 79 (3d Cir. 1976), cert. denied, 429 U.S. 1061 (1977). Thus, it makes no sense to place a specific limitation on the Administrator's power in a section that has no operative authority.

C. Delegation to the Administrator

As already noted, the Committee's rewrite of the SBA delegates power to the Administrator not the Administration. This represents standard practice in administrative law. When Congress delegates power to an agency head, there is no requirement that the agency head must exercise all of that power and an express statutory authorization to delegate is not required.[56] As the courts have noted, this would make it nearly impossible for a governmental official to act if that official was required to carry out all responsibilities delegated by Congress.[57] Even if Congress prohibits delegation of authority, Congress never expects the agency head to perform all functions related to the delegation without the assistance of other employees in the agency.[58]

For example, the Secretary of Commerce is required to prepare fishery management plans pursuant to the Magnuson-Stevens Fishery Conservation Management Act. That Act does not contemplate that the Secretary review thousands of pages of analysis and prepare the plan. Rather, the delegation means that the Secretary is required to approve the plan prepared by others. The Committee takes a similar approach with respect to the delegation of authority to the Administrator. When the Committee specifically prohibits delegation, all the Committee intends is that the final exercise of discretion cannot be delegated to a subsidiary official of the Administration. The Committee clearly intends that the Administrator, when exercising discretion, utilize the services of Administration employees with greater particular expertise. If the Committee simply intended for the Administrator to exercise such discretion without any assistance from subsidiary employees, the Committee would not have created any subsidiary offices and would not have authorized the Administrator to appoint subsidiary officers and employees. Thus, when the Committee mandates that the Administrator select Small Business Development Center grantees the Committee does not expect that the Administrator to review each of the applications individually; rather, the final decision, based on advice of Administration employees, shall be made by the Administrator instead of a some subsidiary official.

Except as otherwise noted, the following section-by-section analysis of Title II of the Committee's bill only addresses changes in the SBA. If there is no discussion of a change, then the bill does not make any change in that particular subsection or paragraph or subparagraph of the SBA (exclusive of necessary redesignations and the additions of descriptive clauses introducing subsections, paragraphs, and subparagraphs).[59] In some cases, long paragraphs are further broken down into subparagraphs, clauses, and subclauses. Finally, the Committee made the stylistic change from "percentum" to "percent." While the Committee does not believe that the push for "plain" English necessarily improves writing or

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[56] *E.g., Fleming* v. *Mohawk Wrecking & Lumber Co.,* 331 U.S. 111, 121–22 (1947); *Southern Pac. Transp. Co.* v. *Watt,* 700 F.2d 550, 556 (9th Cir. 1983), cert. denied, 464 U.S. 1064 (1984).

[57] *E.g., United States* v. *Mango,* 199 Fad 85, 91 (2d Cir. 1999); *EEOC* v. *Raymond Metals Products Co.,* 530 F.2d 590, 594 (4th Cir. 1976).

[58] *See United States* v. *Giordano,* 416 U.S. 505, 512–14(1974); *Inland Empire Public Land Council* v. *Glickman,* 88 F.3d 697, 703 (9th Cir. 1996).

[59] The Committee added numerous headings to subsections, paragraphs, and subparagraphs in the SBA. The Committee believes that this comports with current statutory drafting practices and also makes the SBA easier to read.

clarity, the change represents an appropriate modernization of the Act. The Committee believes that this is an appropriate modernization of the language in the Act.

The report only addresses "new" subsections, paragraphs, and clauses when an actual substantive change in the law is made. New subsections, paragraphs, and clauses that are not addressed do not change existing law. The Committee is of the opinion that such changes make the SBA easier to read.

Section 202. Findings, Statements of Policy

This section revises the findings and statements of policy for the SBA. The Committee made the following changes: a) the bill adds small manufacturers to those small business concerns that the Administrator must assist in competing in international markets; and b) the Committee adds a revised § 2(i)[60] that requires the Administrator to operate the programs authorized by the SBA to provide maximum assistance to small manufacturers. The addition of a revised § 2(i) should not be interpreted as the Committee's dissatisfaction with the Administrator's efforts to assist small manufacturers. Rather, it simply highlights the importance that the Committee places on small manufacturers and as reminder to the Administrator that programs authorized by the SBA should assist, to the maximum extent possible, small manufacturers.

Section 203. Definitions

This section contains the definitions applicable to the SBA by revising § 3 of the SBA. The Committee made a number of changes and to existing definitions and added new definitions to revised § 3 of the SBA. The Committee bill, due to changes, was forced to redesignate certain definitions, although it tried to keep that to a minimum.

A. Small Business Concern; Recertification—§ 3(a)(4)

Federal procurement law mandates that the determination of size of a business occur at the time of award of the contract. In the case of contractors placed on the Federal Supply Schedule, the General Services Administration determines size of a business at the time of placement on the schedule not when a specific order is made from the contractor off the Schedule.[61] Contracts with the federal government, including option years, are getting longer and longer. Thus, a business that was small at the time of award may, after five or ten years, no longer be a small business. The Administrator recognizes that and has proposed a rule that would require small businesses to recertify themselves as small every year on the anniversary date of their first contract award.

The Committee concurs with the Administrator that the determination of size status must be done periodically. Otherwise, it will be impossible for contracting officers to meet the small business contracting goals set forth in § 15 of the SBA. However, the Committee does not believe that it is appropriate to recertify every

[60] The Committee moved existing 2(i) to the powers of the Administrator in § 4.

[61] Although there appears to be some dispute over the legality of when a contract actually issues under the Federal Supply Schedule, the listing of a contractor and the payment by the contractor to the Administrator of the General Services Administration can be considered to be a contract.

year. First, unless a small business is unusually successful or purchased, it is unlikely that its size status will change on an annual basis. Second, the process of recertification, while not unduly complicated, imposes additional paperwork burdens on the vast majority of small businesses in order to isolate a few small businesses that have outgrown their status. The Committee believes that the Administrator should undertake closer scrutiny of the PRO–NET database rather than forcing thousands of small businesses to recertify their status every year.

The Committee adopts a different approach. The bill adds a new subparagraph (4) to § 3(a) of the SBA that mandates recertification once every five years. The Committee believes that this represents an appropriate balance between recertification every year and the current process that potentially allows a small business to remain that indefinitely. It is also the opinion of the Committee that five years represents a sufficient period in which a business might outgrow its status as small.

The Committee's approach also incorporates a growth factor into the recertification decision thus enabling a small business to grow beyond the size status without fear of losing an existing contract. For purposes contracts awarded prior to a recertification, an increase of 20 percent above the existing standard for size determinations based on revenue or 5 percent above the existing standard for size determination based on number of employees will not result in the treatment of the business as something other than small. Of course, the concern will not be eligible for any new contracts that are to set aside for small businesses. The Committee adopted this growth factor to encourage small business concerns to grow without fear of losing existing federal government contracts. Thus, a small manufacturer with a size standard of 500 employees would be able to hire 25 new employees during a five-year period without fear of losing an existing contract.

B. Qualified Indian Tribe—§ 3(d)

The bill makes a technical change to the term "Qualified Indian Tribe." Current law defines a "Qualified Indian Tribe" as one that owns and controls 100 percent of a small business. That definition is inconsistent with the definition of a small business owned and controlled by an Indian tribe for purposes of § 8 of the SBA because § 8 allows ownership of less than 100 percent of a small business concern by an Indian tribe. The bill makes a technical correction to that emends the definition by adding "except as otherwise provided in section § 8."

C. State—§ 3(e)

The SBA currently contains a number of separate places in which the term "State" is defined. The bill eliminates all of those definitions and collects them in § 3(e). A state includes all of the territories of the United States including the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Marianas Islands.

D. Contracting Officer—§ 3(f)

The definition of contracting officer was set forth elsewhere in the SBA, such as in § 31. The Committee did not change the definition but simply moved it to the definition section.

E. Small Business Development Center—§ 3(g)

Small business development centers have been in existence since 1980. Yet, neither § 21 of the SBA nor § 3 has ever defined the term "small business development center." This had led to substantial confusion—whether a "small business development center" is actually the grantee of the program established by § 21 of the Act or an actual site where a grantee under § 21 delivers required services. The Committee's bill adopts the approach that the "small business development center" constitutes the office at which any of the services mandated by § 21 are delivered. Thus, a "small business development center" is a physical location.

F. Credit Elsewhere—§ 3(h)

The term is defined in § 3 and elsewhere in the SBA. The Committee deleted the other places where the term is defined in the Act. The Committee's action should not be taken to imply any change in the meaning of the term "credit elsewhere."

G. Disaster—§ 3(k)

The Committee added the term "acts of terrorism" to those events that can be classified as a disaster. This enables the Administrator to more easily deal with incidents, such as those that occurred on September 11, 2001 and its aftermath.

The Committee eliminated from the term disaster "economic dislocations" because the events of September 11, 2001 led to substantial "economic dislocation" throughout the United States. However, the elimination of the term "economic dislocation" is not intended to authorize disaster assistance for any economic dislocation. For example, the spike in prices for electricity in California in late 2000 and early 2001 would not qualify for disaster assistance under the SBA. On the other hand, the failure of the electricity grid due to an act of terrorism would be an economic dislocation for which the Administrator should provide disaster relief.

The bill also eliminates from the definition of disaster any closure of a fishery to comply with the requirements of the Magnuson-Stevenson Fishery Conservation Management Act. The Committee believes that such closures are economic dislocations that do not stem from a single event (or in the case of terrorism) a series of coordinated events.

H. Contract Bundling—§ 3(o)

On March 19, 2002, the President announced his small business policies. One of the primary concerns of small businesses is contract bundling—a procedure in which contracting officers combine multiple requirements into a single contract in a manner that prevents small businesses from competing.[62] The President announced

[62] Technically, nothing prevents a small business from responding to a bundled contract. However, the vast majority of small businesses do not have the resources to provide multiple services

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that contract bundling should cease. The Committee fully concurs with the President's announcement. Small businesses ensure competition and competition, whether in the private market or federal contracting market, leads to lower prices and better service.[63]

The Committee has a long history of oversight with respect to contract bundling. The Committee has held a number of hearings on contract bundling, submitted letters objecting to various procurement strategies that bundle contracts, and Committee staff has met with procurement officials to express displeasure at contracting strategies that lead to bundled contracts.

The Committee's efforts on contract bundling revealed problems with the existing definition of contract bundling. The Committee emended the definition to correct these problems.

First, agency procurement officials often would simply designate a contract as representing a new method of procurement and thus avoid the classification as a bundle because the current definition concerns the consolidation of existing requirements. The Committee resolves this problem by modifying the definition to include consolidation of any contract requirements without regard to whether the procuring agency considers them to be a consolidation of existing requirements or new requirements. Thus, if two existing requirements are consolidated, the contract is to be considered a bundle even if the agency considers them to be a new acquisition strategy. Second, the regulations implementing the definition of "contract bundling" excluded any contract for which an A–76 study has been performed.[64] The Committee believes that the performance of an A–76 study simply has nothing to do with whether contract requirements are consolidated. Therefore, the bill eliminates the exclusion for studies examining the effect of a procurement strategy on civilian or military personnel. Third, the Committee relates the term "bundled contract" to the new term added to the SBA—"bundling of contract requirements."

A "bundling of contract requirements" represents a procurement strategy in which the procuring agency is attempting to satisfy two or more existing requirements that were performed under 2 or more separate contracts in which the total cost of the separate contracts are lower than the total cost of the contract for which offers are solicited. The Committee adopted this brightline cost test because it eliminates confusion on when a bundling occurs. The contracting officer can examine existing requirements, add up the cost of them, and see whether they are less than the cost of the new contract. The Committee believes that it is particularly inappropriate to consolidate contract requirements if it will cost the government more money. The Committee does not intend that the government might not reap other benefits from the bundling of contract requirements. This bright-line standard is imposed simply to ensure that the contracting officers conduct the appropriate anal-

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or a single service over a wide area or supply the government with all of its needs for a particular product. The contracting officer, in reviewing any bids by small businesses, would likely find them non-responsive and remove them from further competition.

[63] Federal procurement law has a strong preference for competition. 41 U.S.C. § 253(a)(1)(A); see *Krygoski Constr. Co.* v. *United States,* 94 F.3d 1537, 1542–43 (Fed. Cir. 1996), cert. denied, 520 U.S. 1210 (1997); *American Science and Eng'g, Inc.* v. *United States*, 69 F. Supp. 2d 227, 230 (D. Mass. 1999).

[64] OMB Circular A–76 requires an agency to determine whether a particular good or service can be supplied more cheaply by using federal personnel or private contractors. The circular details the requirements for conducting such a study.

yses required by the Small Business Reauthorization Act of 1997 and determine whether the bundled contract will provide substantial measurable benefits (other than putative cost savings) to the government. Thus, a contract whose overall price is lower than two or more separate contracts can never be considered a bundling of contract requirements because, in the opinion of the Committee, the cost-savings represent a benefit to the government. Furthermore, the Committee is not interested in having the government perform analyses on contracts in which it will save money.

A bundling of contract requirements does not occur if the award of the contract is suitable for small businesses. The Committee does not change existing law for determining when a contract award is unsuitable for small businesses.

The biggest problem in Committee's battle against contract bundling were procurement strategies that any reasonable individual would term a bundle but the contracting officer would conclude that it was not a bundle. Two consistent loopholes that agencies used were the utilization of multiple award contracts (including task or delivery orders under multiple award contracts) or the creation of new procurement requirements. For example, the agency might determine that a task order on a multiple award contract is not a "bundling methodology" because one of the multiple awardee's is a small business. Nevertheless, the requirements for a particular task order might require the delivery of a product to multiple federal offices that no small business could accomplish. In the Committee's view, this would constitute a bundling methodology even though the underlying contract is not a bundled contract. The Committee's bill adds a new subparagraph defining "bundling methodology" to close these interpretive loopholes. Essentially, the term "bundling methodology" delineates those procurement strategies in which a contracting officer can create a bundled contract. The Committee includes individual solicitations, multiple award contracts, task or delivery orders under a single or multiple award contract, or the creation of a new procurement requirement that permits consolidation of existing contract requirements.[65]

I. HUBZones—§ 3(p)

The Committee made a number of changes to the definitions applicable to HUBZones (Historically Underutilized Business Zones). Some of the changes represent a change of policy concerning HUBZones. Other changes represent technical corrections.

Section 3(p) currently refers to businesses owned by tribal governments. The United States Code does not use the term "tribal government" but rather uses the term "tribal organization." The Committee substituted the term "tribal organization" for "tribal government" and cross-referenced the definition of "tribal organization" from section 4(1) of the Indian Self-Determination and Education Assistance Act. The Committee does not intend this technical change to alter the HUBZone status of any business owned by native Americans or their tribes. Currently, § 3(p)(5)(A) imposes

[65] The last requirement would result in the classification of the Air Force's FAST contract as a bundled contract even though the Air Force contends it is not a bundled contract because it represents a new contract requirement or acquisition strategy. In reality, the FAST contract is a bundle because the Air Force obtained almost all of the goods and services in the FAST contract through separate contract requirements or through the use of existing contracts of other units of the Department of Defense.

certain limitations on the ability of a HUBZone business to subcontract out the procurement of agricultural commodities. The Committee believes that the blanket limitation is inappropriate. Any other regular dealer of supplies is entitled to compete as a HUBZone small business and the Committee has received no evidence to the contrary that agricultural commodities should be treated any differently than the provision of any other supplies to the federal government. The Committee therefore repealed § 3(p)(5)(A)(i)(III)(cc). The Committee also repealed the definition of "agricultural commodity" in § 3(p)(7) since no special provisions apply to "agricultural commodity."

The Committee also modified the requirement for a HUBZone small business. Rather than allowing any small business that meets the employment criteria set forth in the § 3(p), the Committee determined that only those small businesses that are economically disadvantaged should be eligible for a procurement preference. Other than restricted competition within the rule of two for small businesses generally, all other small business contractual preference programs involve some type of disadvantage. For example, Javits-Wagner-O'Day contractors and service-disabled veterans are disabled. Their disadvantage needs no further expatiation. Women-owned businesses are only entitled to a preference if they are in industries in which women are historically underrepresented. Firms participating in the program pursuant to § 8(a) of the SBA must be both economically and socially disadvantaged prior to entry. No such limitation exists on HUBZone firms and the Committee believes that it is inappropriate to provide a preference solely on the basis of employment of individuals from certain census tracts.[66] Therefore, the bill requires a HUBZone firm to be economically disadvantaged. The Committee does not intend that the term "economically disadvantaged" as used in § 3(p) shall have the same meaning as that in § 8(a). The Committee expects that the Administrator develop regulations determining what constitutes "economic disadvantage" by examining specific industry categories, what resources are needed to compete in those industrial classifications, and would not expect economic disadvantage to have a net worth of anything less than $750,000, exclusive of the value of the business and an owner's home.

The Committee also is concerned about lax oversight in the HUBZone program, particularly whether a business is actually located in a HUBZone (they changed after the 2000 census and the three-year grace period for redesignated areas has lapsed) and whether they are employing individuals currently residing in a HUBZone. HUBZone firms currently self-certify and there are more than 7,555 in the Administration's database. In a random audit of HUBZone firms, the Inspector General found that "over two-thirds of the 15 subject companies were either not in compliance with HUBZone eligbility requirements or had presumably gone out of

[66] There is no evidence that the individuals who are living in such census tracts are necessarily unable to obtain employment either within the HUBZone or outside of the HUBZone. For example, there are HUBZones in the Washington, DC metropolitan area in which the typical single-family home is valued in excess of $350,000 and some homes in those HUBZones sell for more than $500,000. The Committee is unsure how the hiring employees who can afford $500,000 homes to work in another HUBZone provide job growth in "historically underutilized business areas."

business."[67] The Committee concurs with the Inspector General that there is little assurance "that the program will provide increased employment, investment and economic development for depressed areas."[68] The Inspector General concluded "greater verification of HUBZone company qualifications is necessary."[69]

In response to the Inspector General's audit, the Committee requires that district counsels visit the HUBZone business prior to it first responding to a solicitation from a federal agency and again if the business moves it primary location pursuant to new § 3(p)(5)(B).[70] This will ensure that only legitimate HUBZone firms are obtaining the price preference in source selection.[71] The Committee intends that the performance of the site visits constitutes the highest priority for district counsels. Furthermore, the Committee intends that the Administrator will promulgate new regulations or standard operating procedures that will enable district counsels to perform these site visits and certifications in a timely manner. Given the usual lead time associated with response to many contractual offers, the Committee would expect that district counsels prioritize based on the due dates for responding to specific solicitations. This will require the HUBZone firm and the district office to maintain close contact.[72] Finally, the Committee does not expect that the Administration shall prejudice any HUBZone firm by failing to perform a certification within the time period needed to respond to the contract. The Committee would expect that the Administrator will modify the agency's regulations to ensure that a failure by a district counsel to perform the site visit within the time needed by the HUBZone firm to respond to the solicitation accurately will not prejudice the HUBZone firm. Such regulations may include that the HUBZone would be permitted to self-certify for the an initial bid, but the district counsel would have to make a site visit before the submission of the next bid

HUBZone firms are required to expend the majority of the dollar value of the contract (except in certain circumstances such as businesses that serve as regular dealers), on personnel costs for the HUBZone business that won the contract or other HUBZone businesses that are subcontractors to the winning HUBZone firm. The Committee recognizes that the 50 percent requirement may not be appropriate for certain industries, i.e., more subcontracting occurs (such as in construction where a general contractor may be in a HUBZone and wins a bid but needs to subcontract out various construction services). The Committee therefore added a subparagraph

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[67] INSPECTOR GENERAL, UNITED STATES SMALL BUSINESS ADMINISTRATION, Audit of the Eligibility of 15 HUBZone Companies and a Review of the HUBZone Empowerment Contracting Program's Internal Controls at 3 (Audit Report No. 3–05) (Jan. 22, 2003).

[68] Id.

[69] Id. at 4.

[70] The Committee does not expect that the visitations on change of address of the primary location will be particularly complex. The only requirement will be to determine that the business actually is located at its new location and it is in a HUBZone. The Committee would not object to having the district counsel delegate this function to another employee within the district office as long as the district counsel filed the appropriate written certification.

[71] The Committee recognizes that HUBZone firms which certify incorrectly are subject to potential criminal penalties. However, given the fact that the focus of the Justice Department is on other activities (fighting the importation of drugs and the actions of potential terrorists), the Committee does not believe that there is a significant likelihood of prosecution for filing false statements with the government by HUBZone firms (especially if the firms do not win contracts).

[72] The Committee believes that such close contact will assist the HUBZone small business because they will be able to utilize the resources of the Administration's district office in obtaining federal government contracts.

(D) to § 3(p)(5)(D) in which the Administrator can take into account industry standards on subcontracting services and may authorize the HUBZone business to perform less than 50 percent of the dollar value of the contract on firm not located within a HUBZone. However, the Committee was concerned that the exception could swallow the general rule and prohibits the Administrator from dropping the percentage of the contract performed within a HUBZone to less than 33 percent of the value of the contract. That would fundamentally defeat the purpose of the HUBZone program—to provide employment within a HUBZone.

New subparagraph (E) requires the Administrator to promulgate regulations to implement the Administrator's new authority in subparagraph (D) taking into account industry standards. The Committee expects the Administrator to place the highest priority on developing rules applicable to the construction industry.

J. Small Manufacturer—§ 3(r)

The Committee has made a number of revisions in the SBA and SBIA to revitalize the manufacturing sector in the American economy. The Committee determined that it would be useful to define the term "small manufacturer." While all small businesses whose primary industrial classification is in North American Industrial Classification sectors 31, 32, and 33 (the sectors for manufacturing), not all small business concerns in those sectors are considered small manufacturers. The Committee determined that small manufacturers should be limited to those small business concerns that have all of their production facilities are located in the United States. The Committee does not intend that small business concerns that have manufacturing facilities situated outside of the United States should be denied assistance under SBA and SBIA programs. However, special benefits should be afforded to those manufacturers whose production facilities are located in the United States.

K. Small Business Lending Company—§ (3)(s)

Almost all of the lenders authorized by the Administrator to issue guaranteed loans pursuant to § 7(a) are lending institutions regulated by a federal financial regulator. However, there are a few institutions that make guaranteed loans that are not subject to federal financial regulatory oversight or regulation by a state banking authority. The Administrator classifies these institutions as "small business lending companies." Since the Committee adds a new § 23 granting the Administrator power to regulate these entities, the bill adds a definition of small business lending companies.

L. Non-Federally Regulated SBA Lenders—§ 3(t)

The Administrator also authorizes certain institutions that are subject to regulation by state authorities but whose lending activities are not overseen by federal banking regulators to issue guaranteed loans. The Committee authorizes the Administrator, in new § 23, to regulate these institutions and added a definition to § 3.

M. Procurement Center Representative—§ 3(u)

Section 15 of the SBA mandates that procurement center representatives undertake certain activities. However, the SBA does

not define a procurement center representative. New § 3(u) defines a procurement center representative as an Administration employee whose sole responsibility is to perform the activities specified in § 15(1) related to assisting small businesses and small manufacturers obtain prime government contracts. The Committee determined that the functions of the procurement center representative could not be performed by an employee of the Administration assigned to other duties in addition to that of procurement center representative. Therefore, the Committee requires that the procurement center representative not be assigned any other task.

N. Commercial Marketing Representative—§ 3(v)

One of the functions of the Administration is to assist small businesses in obtaining subcontracts from federal government prime contractors. The Administration assigns an employee called a "commercial marketing representative" to perform this function. The Committee assigns additional responsibilities in § 8 to this employee and determined that a definition should be added to the SBA. As with the procurement center representatives, the Committee determined that the functions of the commercial marketing representative should not be assigned to an Administration employee on a part-time basis.

O. Team—§ 3(w)

One mechanism to increase the number of federal government contracts awarded to small businesses is to allow two or more small businesses to respond to a procuring agency's solicitation as one entity. This arrangement is called teaming and the responding entity is considered a team. The Committee determined that the concept was sufficiently significant to warrant inclusion in the SBA. The Committee also eliminates any confusion about whether a team is considered a small business. If each member of the team is a small business concern, then the team is deemed to be a small business even if the aggregate revenue or employees of the team would exceed the appropriate size standard for the industrial classification under which the contract is awarded.

Section 204. Small Business Administration

This section amends 4 of the SBA, 15 U.S.C. § 634 that provides for the creation of the Administration. In addition to changes set forth below, the Committee repealed the existing § 4(d) that created the Loan Policy Board (which has not been in existence for many years). Subsection (4)(a) establishes the Administration, subsection (4)(b) vests management in the Administrator and Deputy Administrator, subsection (4)(c) delineates the general powers of the Administrator (except with respect to personnel which is set forth in § 6 of the Act), and subsection (4)(d) provides the Administrator with various miscellaneous authorities and limitations on that authority.

A. Deputy Administrator—§ 4(b)(2)

The Committee bill requires the President to appoint a Deputy Administrator confirmed by the Senate rather than giving the President that option. The Committee took this approach because a number of functions are actually delegated to the Deputy Admin-

istrator in the Committee's bill. Furthermore, the President always has appointed a Deputy Administrator since the position was created so the Committee believes that this does not change existing practice.

B. Sue and Be Sued—§ 4(c)(2)

The Committee made one change to the Administrator's authority to sue and be sued. The current language in § 5(b)(1) of the SBA provides that "no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property." The Committee eliminated the term "injunction" because the Committee believes that the Administrator should be subject to injunctive relief when the Administrator violates the: Constitution, SBA, SBIA, Administrative Procedure Act, or some other federal law.

C. Rules and Regulations—§ 4(c)(3)

Section 553(a) of the Administrative Procedure Act excludes from the requirements of notice and comment any rule that deals with public property, loans, grants, benefits, or contracts. A strict application of that standard would eliminate most of the rules promulgated by the Administrator from the requirements of notice and comment. The Administrator adopted a regulation, 13 C.F.R. 101.108, that requires compliance with the public participation requirements of the Administrative Procedure Act. The Committee concurs that it is appropriate to seek notice and comment on Administration regulations and simply codifies this practice thereby prohibiting a subsequent Administrator from repealing this requirement.

Since regulations concerning agency management[73] or personnel (except as otherwise provided in the Committee's bill) do not affect the public's utilization of programs authorized under the SBA, the Committee does not require that the Administrator promulgate such regulations pursuant to notice and comment. However, the Committee has no objection if the Administrator continues an existing practice to provide an opportunity for notice and comment on rules related to agency management and personnel.

D. Gifts—§ 4(c)(6)

The Administrator only has the power to accept gifts pursuant to a limited co-sponsorship authority set forth in § 8(b) and during disasters. The Committee believes that the Administrator should have the same scope and power that the Department of Commerce has to receive and solicit gifts. The bill provides the Administrator and subsidiary personnel with the authority to receive and solicit gifts of real and personal property and personal services. The Committee considers that the donation of personal services includes, but is not limited to, the temporary space for use of events, rental of cars, and the provision of food.

The authority to accept gifts is limited to the provision of training and technical assistance to small business concerns and small manufacturers. The Committee considers this provision sufficiently

[73] Regulations concerning agency procedure and practice, such as rules of practice before the Office of Hearings and Appeals, are not to be considered regulations of agency management. These rules affect the rights of the public and should be issued only after notice and comment.

broad to encompass the acceptance of any gift that in the estimate of the Administrator will further the purposes of the SBA.

The Committee is concerned that the use of gifts may be used (as it has been in the past) for political purposes rather than assisting small businesses. Therefore, the Committee requires that gifts be held in a separate account and audited by the Inspector General to ensure that the gifts are being used to further the purposes of the Act. The Inspector General is required to periodically report to Congress on the outcome of the audits. The Committee is of the opinion that periodic Inspector General audits and reports to Congress will act as a sufficient deterrent to use of gifts for political purposes.

To the extent that a gift, including the donation of a personal service or personal property is utilized for an event that furthers the purposes of the Act, the Administrator is authorized to charge a nominal fee to assist in the defrayment of the cost of the event.

No gift may be accepted if the General Counsel believes that a conflict of interest would occur in the provision of a gift. For example, a gift that is conditioned on the Administration's issuance of a guaranteed loan to a specific entity or entities would constitute one obvious example of a gift that created a conflict of interest because the Administrator's determination on the propriety of issuing the guarantee may be colored by the donation of the gift.

This new paragraph also incorporates existing authority for the Administrator to receive donations of gifts for use in the operation of the disaster loan program. The bill specifically excludes donations of gifts for the disaster loan program from the general gift authority requirements of separate accounts and periodic audits. The Committee believes that recovery from a disaster is sufficiently important that accounting and auditing mandated by this paragraph could interfere with recovery.

E. Co-sponsorship of Events—§ 4(c)(7)

The Committee recognizes that the Administrator and Administration employees regularly arrange for businesses and trade groups to co-sponsor events with the Administration. The Administration receives the benefit of monetary savings while the co-sponsor receives intangible benefits, such as advertising and having its name associated with the promotion of small business development. The Committee finds such co-sponsorship to be extremely beneficial to furthering the purposes of the Act particularly in times of tight budgetary constraints. Therefore, the Committee believes that the co-sponsorship authority should be made permanent rather than terminate on a date certain as is currently provided in § 8(b) of the SBA.

The Committee considers that any donations of services or property (including the provision of space, food, etc.) can be utilized for co-sponsorship as long as the co-sponsor's contributions defray the majority of the cost of the event. The Committee does not believe that a co-sponsor who only defrays a small portion of the cost of an event should be termed a cosponsor. Of course, nothing would prohibit the Administrator from accepting any such donations as gifts to defray the cost of an event put on by the Administrator.

The bill authorizes any Associate Administrator (as that term is defined under revised § (6)) to approve the co-sponsorship of an

event. The Committee also requires the General Counsel to be involved to avoid potential conflicts of interest. For example, the Administrator may be negotiating a major contract with a large business that also willing to sponsor an event. The General Counsel may determine that the sponsorship appears to undermine the integrity of the procurement process and may lead to challenges under procurement statutes. Therefore, it is appropriate for the General Counsel to be consulted on co-sponsorships.

The Committee is concerned that co-sponsorships also may be utilized for political purposes rather than furthering the purposes of the Act. Therefore, the Committee requires that the Inspector General report to Congress on whether the co-sponsorships have furthered the purposes of the Act.

F. Groups Receiving Special Consideration—§ 4(d)(7)

The SBA authorizes the Administrator to give special consideration to veterans in providing assistance to veterans under the SBA.[74] The Committee extended that special consideration to incorporate the provision of assistance under the SBIA. The Committee also added small manufacturers to the list of entities that should receive special consideration in the provision of assistance under the SBA and SBIA. For example, if the Administrator is unsure whether to approve a loan under Title V of the SBIA to a small manufacturer, it should give the benefit of the doubt to the small manufacturer. Similarly, in providing technical assistance, the Administrator should examine mechanisms to ensure that veterans have appropriate advice from all aspects of the Administration and not just the services provided by the Office of Veterans Affairs.

Section 205. Financial Management

Section 205 of the Committee bill amends § 5 of the SBA to incorporate all of the general financial management provisions into one section. Subsection (5)(a) lays out the powers related to the accounts of the Administration, subsection (5)(b) specifies the financial management powers (including authority to sell financings and liquidate loans), subsection (5)(c) authorizes the sale of guaranteed loans in the secondary market, subsection (5)(d) empowers the Administrator to issue trust certificates for sales made in the secondary market, subsection (5)(e) creates a central registry of loans and trust certificates,[75] subsection (5)(f) provides miscellaneous powers needed to operate the loan and investment programs, and subsection (5)(g) transfers the risk management database from § 4 to § 5 of the SBA.

The Committee made very few substantive changes in the financial management requirements because the Committee is generally pleased with the operation of the secondary markets for guaranteed loans pursuant to § 7(a) of the SBA and sale of debentures issued pursuant to Title V of the SBIA. In addition, while the Committee has significant concerns about overall management of the Administration, those concerns do not extend to the management of the secondary markets in the sale of guaranteed loans or debentures. As

[74] Given this special consideration, it made no sense to retain in § 7, a separate power authorizing the Administrator to make loans to veterans. The Committee repealed that special provision because it amounted to mere surplusage.

[75] The Administrator has contracted the operation of the central registry.

a result, the Committee did not consider any changes to the operations of the secondary markets or include any such changes in the bill.

A. Accounts—§ 5(a)

In 1990, Congress enacted the Federal Credit Reform Act, 2 U.S.C. § 661a–f, as means to more accurately measure the cost of Federal credit programs, including those authorized by the SBA and the SBIA. Section 4(c) of the SBA empowers the Administration to create revolving funds to operate the various loan programs authorized by the SBA and SBIA. The Federal Credit Reform Act eliminated those revolving funds in 1992. The Committee determined that including the provisions for the revolving funds would reenact authority that the Administrator cannot have by operation of other provisions of law. To avoid this problem, the Committee simply authorized that payments to the Administration arising out of transactions related to its loan and investment programs would be made into accounts and funds determined by the Administrator. The Committee expects that the Administrator will work with the Secretary of Treasury and the Office of Management and Budget in identifying all accounts and funds into which monies have been paid since the elimination of the revolving funds. The change in legislative language is not intended to change the operation of the loan programs, as they have operated since the Federal Credit Reform Act became effective in 1992.

B. Limitation on Sales of Financings—§ 5(b)(1)(B)

The Administrator has the authority to dispose of loans by selling them to third parties. Nothing in the SBA mandates that such sales take place. Current Administration procedures mandate that disaster loans, whether performing or non-performing, be sold after two years. The loans are frequently sold to banks that take a much harder line in trying to enforce payment or recover assets than the Administration.[76] This is particularly problematic for businesses that have received disaster loans. The business may not be current in payments because it is trying to recover from the disaster. The situation can be exacerbated in flood plains or hurricane-prone areas because the business might be hit by a subsequent disaster a few years after the initial disaster loan was made.

The Committee does not object to the Administration's efforts to increase liquidity in its disaster loan program by selling disaster loans. However, the Committee is concerned that the Administration's focus on liquidity seems to take priority over ensuring that small businesses recover from a disaster. In addition, the General Accounting Office uncovered lapses in the ability of the Administrator to account for the sale of disaster loans. Given these concerns, the Committee assessed a number of approaches to find the correct balance between the palliative nature of the disaster loans and the Administration's need for liquidity. The Committee considered, but rejected, a ban of disaster loan sales. That could create some problems of liquidity for the Administration during future disasters. The Committee also examined whether it would be ap-

[76] The Committee recognizes that private-sector banks must make money. Thus, the Committee does not object to private banks making a greater effort to collect on loans than the Administration.

propriate to limit disaster loan sales only to loans that are performing. This would increase liquidity without imposing greater risk on financial institutions that must be aggressive with non-performing loans if they are to recover money. The Committee rejected this approach because the Administration historically does not have a high recovery on liquidated and foreclosed loans. The Committee believes that the taxpayer and the liquidity of funds for disaster loans will be protected by the efforts of private institutions to recover on delinquent loans.

The Committee believes that the approach adopted in the bill—a prohibition on sales of disaster loans for three years—represents a sound compromise between ensuring that disaster loan recipients have sufficient time to recover while ensuring that the Administration still maintains liquidity in its disaster loan portfolio. The Committee added a further restriction to prevent the sale of a loan within three months after the end of the three-year period if, during the three months prior to the end of that three-year period, the Administration was engaged in negotiations for the purpose of substantially altering the term of the loan. The Committee included this provision to allow the Administrator and the business to conclude negotiations (if possible) without having the loan simply sold because the three-year deadline was hit. Furthermore, the Committee believes that the Administrator will instruct all personnel involved in negotiations to focus their efforts on concluding negotiations rather than simply allowing the time-period for sale to commence. The Committee is of the opinion that a substantial alteration that benefits the borrower will ultimately benefit the Administration (through the probability of higher repayment) and aid in the recovery of communities devastated by disaster. Finally, the Committee expects that the Administrator will continue to provide all data needed by the General Accounting Office to continue its investigation of disaster loan sales.

C. Agent Fees—§ 5(e)(5)

The fiscal transfer agent has the responsibility to administer each pool[77] or individual certificate. 13 C.F.R. § 120.640. The fiscal transfer agent also maintains a registry of holders of trust certificates. The fiscal transfer agent also issues the trust certificate backing the individual loan. *Id.* at § 120.643. The fiscal transfer agent is currently paid on a fee basis per transaction plus any interest on payments made while those payments are under the control of the agent. In other terms, the contract allows the fiscal transfer agent to earn money on the float. This paragraph codifies the legal authority of the Administrator to use interest on the float as part of the reimbursement package for the fiscal transfer agent. In making this change, the Committee specifically rejects those portions of the Inspector General's report (03–034) that raise questions concerning the availability of the float to reimburse the fiscal and transfer agent.

[77] Loans are pooled by loan packagers (known as pool assemblers) when the loans are sold on the secondary market.

Section 206. Organization and Staff

Section 206(a) amends existing § 6 of the SBA to incorporate provisions concerning the organizational structure of the Administration and requirements to be met by various subsidiary Administration officials. Subsection (6)(a) creates the general authority of the Administrator, subsection (6)(b) authorizes certain associate administrators, subsection (6)(c) creates certain subsidiary offices, subsection 6(d) authorizes the appointment of officers within the Administration to manage the subsidiary offices created in subsection (6)(c), subsection (6)(e) authorizes the appointment of a general counsel, subsection (6)(f) creates regional offices, subsection (6)(g) establishes district offices and authorizes the appointment of subsidiary employees within the district offices, and subsection (6)(h) grants certain general personnel authority to the Administrator. Subsection 206(b) creates certain transition rules related to subsidiary employees.

A. General Organizational Authority—§ (6)(a)

The Administrator is authorized to create subsidiary offices and appoint employees necessary to carry out the SBA and SBIA. The Committee intends this power to be equal to the power granted other agency heads with respect to the management of agency structure and personnel. While it is not normal to limit this plenary authority, the Committee determined that it was necessary to ensure that the Administrator appoint qualified individuals in certain important subsidiary offices. In other agencies that similarly affect many members of the public, the individuals would be subject to confirmation by the Senate and the confirmation process assures certain minimum qualifications of the subsidiary employees. The Committee believes that a more appropriate manner is to require certain levels of expertise of key subsidiary employees rather than converting them to the Senate-confirmed slots.

B. Associate Administrators—§ 6(b)

As already noted in the Committee report, the Administration has far more associate administrators than are authorized by statute. Furthermore, the Administrator has created an entire separate level of associate deputy administrators to who associate administrators report. The Committee determined that this structure was not logical. The Committee's approach is to authorize the current organizational structure of the Administration by converting the associate deputy administrators to associate administrators and taking the existing associate administrators and categorizing them as assistant administrators. Thus, assistant administrators report to associate administrator who report to the Deputy Administrator and Administrator.

While there has been some concern that this organizational structure constrains the discretion of the Administrator, the Committee rejects all such assertions. This is no more restrictive than many other agencies that have statutorily created subsidiary offices that cannot be altered without the approval of Congress.

The bill establishes four Associate Administrators: Capital Access, Government Contracting and Minority Small Business Opportunities, Enterprise Training and Outreach, and Administration

and Management (who also acts as the Chief Operating Officer of the Administration).

The Associate Administrator for Capital Access is to be appointed from civilian life and have five years experience in providing investment or banking services to businesses. The Committee does not intend that the Associate Administrator need to have actually been involved in the banking or investment banking industries. The experience requirement is designed to ensure that the Administrator finds someone who has detailed knowledge of the investment and banking industries, preferably as it relates to small businesses and not necessarily someone that actually worked in the banking or investment banking industry. However, an individual that provided financial audit services to the banking or investment banking industry certainly would qualify in the opinion of the Committee. The Committee determined that the person most likely to have experience in this field would be someone in the private sector. For example, an attorney that represents banks in commercial loan transactions will have a better sense of the needs of private investors than a bank auditor whose entire career was spent at the Office of the Comptroller of the Currency.[78]

The Associate Administrator for Government Contracting and Minority Small Business Opportunities is required to have experience in federal procurement. Given the arcane nature of this field, the Committee believes that hiring an individual from within the federal government would not be inappropriate due to that individual's exposure to federal procurement.

The Associate Administrator for Enterprise Training and Outreach also may be hired from civilian life or the federal government. Community-based outreach programs is not to be interpreted literally to mean only certain organizations involved in the reaching out to local communities. Rather, the Committee uses the term to incorporate the vast majority of programs that exist in the United States to provide technical advice and assistance to individuals, businesses, or communities in improving some aspect of their life or surroundings. These programs may run the gamut from the President's Faith-based Initiatives to overseeing cooperative extension programs at the United States Department of Agriculture. Similarly, state and local governments that operate various outreach and training programs, including adult education, would qualify as having experience in community-based outreach organizations. And of course, the Committee certainly believes that individuals involved in the thousands of not-forprofit and charitable organizations also would meet the qualifications experience. For example, an individual that worked in a trade association on certification and testing of its members would be involved in community-based outreach programs.

The Committee did not impose an experience requirement on the Associate Administrator for Administration and Management because that individual is not directly overseeing delivery of programs or services to the small business community. The Committee in no way underestimates the importance of this position for the smooth delivery of services to the public. Therefore, the Committee

[78] The reference is not meant to discount the expertise of the employees of the Office of the Comptroller of the Currency. It is simply that someone involved in banking or financial services in the private sector is more likely to have a better grasp of the financial needs of businesses.

intends that the individual appointed by the Administrator will have substantial management experience in large organization, public or private, or preferably both. As with the Associate Administrator for Capital Access, the management experience does not have to be hands-on. The Committee recognizes that there are many talented individuals working for management consulting firms that are capable of providing the necessary skills to the Administration. Clearly, the Committee does not wish to inhibit the Administrator from selecting such an individual because of their unique perspective on managing large organizations.

C. Establishment of Certain Offices—§ 6(c)

Currently, there are six offices established within the Administration by the SBA.[79] The Committee's bill simply transfers the statutory authority for those six offices—Minority Small Business and Capital Ownership Development, Veterans Business (section 205(c) repeals § 32 of the SBA because the office is now created by § 6), Small Business Development Centers, Investment, International Trade (section 205(b) makes necessary conforming changes to § 22 of the SBA), and Women's Business Ownership—from elsewhere in the SBA to § 6. The Committee also creates two new offices—the Office of Lender Oversight and the Office of Congressional and Legislative Affairs. Both of these offices currently exist within the Administration and, due to their importance, the Committee believes that the Administrator should not have the power to eliminate either office. The Committee does not intend that the Administrator should eliminate other offices simply because they are not listed by statute. For example, the Committee recognizes the importance of the Office of Disaster Assistance but did not feel that the Administrator, in a reorganization of the agency, might eliminate that office or change its existing reporting requirement—directly to the Administrator. The Committee is confident that the Administrator will continue to appoint someone to head that office, although that individual will be an assistant administrator because the bill only authorizes four Associate Administrators.

D. Appointment of Assistant Administrators

Each of the Offices created pursuant to § (6)(c) is to be managed by an assistant administrator. Except for the Assistant Administrator for Congressional and Legislative Affairs, each Assistant Administrator reports to an appropriate Associate Administrator. In the Committee's view, there is no appropriate individual, other than the Administrator, to whom the Assistant Administrator for Congressional and Legislative Affairs should report. The Committee believes that person should be an integral part of the Administrator's inner circle and decisionmaking team.

The Committee set forth qualifications that each Assistant Administrator has to meet. The Committee examined whether the Administrator should have the discretion to hire employees from outside the Administration to manage these offices. In certain instances, the Committee allows the Administrator to hire employees from outside the Administration to run offices. In some cases, the

[79] Technically, there are 7 but specific statutory authority for the seventh—the Office of Rural Affairs has been repealed.

operations of the programs overseen by particular offices are sufficiently complex and arcane that the Committee considers the only individuals with sufficient expertise to be employees of the Administration. This does not represent a radical departure from existing practice. Most offices within the Administration are managed by career employees; these career employees report to a political appointee (a deputy associate administrator). The Committee also rejects the notion that this detail infringes on the prerogatives of the Administrator or President to appoint subsidiary personnel. There are a number of other provisions of law specifying criteria for employment and mandating whether the individual shall be a career employee, in the senior executive service, or exempt from the requirements of Title 5, United States Code.[80] In fact, the position of the Assistant Administrator for Women's Business Ownership within the Administration is designated as a non-career Senior Executive Service position and the Associate Administrator for Veterans Affairs must be within the Senior Executive Service. The Committee simply exercised its authority to set forth or modify the criteria for various subsidiary positions within the Administration. The Committee simply is seeking a mechanism to ensure that

[80] 6 U.S.C. § 252(a)(2) (requiring head of Bureau of Border Security to have minimum five years law enforcement and five years management experience); id. at § 271(a)(2) (requiring head of Bureau of Citizenship to have minimum 5 years management experience); 7 U.S.C. § 5402(c)(1) (requiring employees within Office of Agricultural Environmental Quality to have professional experience in environmental matters); id. at § 7657 (mandating that members of Senior Scientific Research Service have doctoral degrees and conducted research in agriculture or forestry); 10 U.S.C. § 3014(c)(4) (requiring Secretary of Army to appoint head of auditing function career reserved position who has minimum 5 years accounting or auditing experience); id. at § 5014(c)(5)(A) (mandating that head of office of Navy audit function be career reserved position with minimum of 5 years accounting or auditing experience); id. at § 8014(c)(5) (same requirement for Air Force as for Army and Navy); 15 U.S.C. § 1511e(b) (requiring Director of Office of Space Commercialization to be in Senior Executive Service); id. at § 1511d(a)(2) (requiring head of Chesapeake Bay office in NOAA to have knowledge and experience in resource or research on problems of Chesapeake Bay); 16 U.S.C. § 1 (Director of National Park Service required to have substantial experience and demonstrated competence in land management and natural or cultural resource conservation); 20 U.S.C. § 3412(i) (requiring liaison for community and junior colleges within Department of Education to have graduated from a junior or community college and worked at one for not less than 5 years); id. at § 3426(b) (mandating that liaison for proprietary institutions in Department of Education have graduated from proprietary institution and employed by one for not less than 5 years); id. at § 3427 (Secretary of Education required to appoint a coordinator for outlying areas who has substantial experience in operation of federal programs in territories and commonwealths); id. at § 4709; (requiring Executive Secretary of Barry Goldwater Foundation to be non-career Senior Executive Service); id. at § 5503 (mandating director of Office of Environmental Education to be in Senior Executive Service and limits employees to a maximum of ten); 22 U.S.C. § 2664a(c) (ombudsman for civil service employees at Department of State must be career reserved position in Senior Executive Service and shall be authorized to participate in all Secretarial Management Council meetings); 30 U.S.C. § 954 (mandating experiential requirements for mining inspectors and other employees of Mine Safety Health Administration); 31 U.S.C. § 901(a) (mandating that chief financial officer of certain agencies to be career employees); id. at § 903(a) (setting deputy chief financial officers as career reserved position within Senior Executive Service); 33 U.S.C. § 1123(d)(1) (mandating that Secretary appoint Director of Sea Grant College Program who has administrative experience and knowledge or expertise in fields related to ocean, coastal or Great Lakes resources); 38 U.S.C. § 317(b) (requiring that director of Center for Minority Veterans within Department of Veterans Affairs be appointee within Senior Executive Service); id. at § 319 (head of Office of Employment Discrimination at Department of Veterans Affairs must be a career appointee in Senior Executive Service); 42 U.S.C. § 237 (requiring biomedical research service within Public Health Service to have doctorates in biomedicine or related field and meet qualifications standards established by Office of Personnel Management for appointment at GS–15 level and exempting such employees from general schedule service requirements); id. at § 904(c) (limiting number of non-career Senior Executive Service or policymaking positions within Social Security Administration to 20); id. at § 7144b(b) (mandating Secretary of Energy appoint Director of Counterintelligence in Senior Executive Service and require individual to have substantial experience in matters relating to counterintelligence); 44 U.S.C. § 2103(c) (requiring Deputy Archivist to be a career reserved position in Senior Executive Service); 49 U.S.C. § 106(c)–(d) (specifying requirements for Administrator and Deputy Administrator of Federal Aviation Administration including limitation on whether Administrator and Deputy Administrator both can be current or former military officers). This list is not exhaustive and excludes numerous boards and commissions to which the President is required to appoint experts in specific fields.

qualified people administer the programs set forth in the SBA and SBIA.

The Committee requires that the Assistant Administrator for Minority Small Business and Capital Ownership Development is to run the program established by § 8(a) of the SBA, it makes sense that the individual have significant experience within the Administration in providing assistance to minority small businesses. Not all of the experience needs to be within the Office of Minority Small Business and Capital Ownership Development. The Committee determined that it would be inappropriate to politicize the position and determined that the Assistant Administrator be a career employee. The Committee required five years of experience in assisting minority small businesses to ensure that the individual was qualified to oversee the tasks required to run the program established by § 8(a).

The Committee requires that the Assistant Administrator for Veterans Business have significant experience dealing with veterans and providing entrepreneurial outreach to veterans. That outreach can be in a variety of different settings and may also include work experience in SBDCs or the Veterans Service Corporation. The critical issue to the Committee is that the individual be capable and understanding of the special needs of veterans (particularly disabled veterans) in starting their own businesses or seeking assistance from the government outside of the military. The Committee determined that it would be inappropriate to politicize the position and determined that the Assistant Administrator be a career employee. The Committee required five years of experience in assisting minority small businesses to ensure that the individual truly had the necessary experience of having assisted veterans.

The Committee requires that the Assistant Administrator for Small Business Development Centers have five years experience in entrepreneurial outreach to small businesses or as an educator in a business program in an institution of higher learning. Given that the program operated pursuant to 21 of the SBA is a nearly $100 million grant program and the Committee substantially increases the oversight of the grantees, it is necessary that the individual have significant experience and understanding of grant programs particularly as they relate to higher education. The Committee intends that the five years of experience can be some combination of outreach and education or all of one or the other. Given recent experience with the small business development centers in California, the Committee determined that management of the program should be vested in a career employee.

The Assistant Administrator for Investment is required to be a career employee. This position is the closest position within the Administration to the oversight role played by the Securities and Exchange Commission (SEC). Congress established the SEC in a manner to insulate it from undue influence by the President. The Committee believes that the individual overseeing the health of SBICs should be as equally insulated from politicization as the SEC. Therefore, the Assistant Administrator must be a career employee. Although the Committee did not specify an experience requirement, the Committee believes that the Administrator should seek out an individual extremely well qualified in regulating in-

vestment bankers or mutual funds. Such individual may be hired from the private sector, state regulators, or from another regulatory institution including the SEC.

The Assistant Administrator for Lender Oversight is the closest position within the agency to many of the federal banking regulators such as the Office of the Comptroller of the Currency. The banking regulators are well insulated from political influence and the Committee believes that it is appropriate for the Administration's equivalent of banking regulators to be similarly insulated. As a result the Committee requires the employee to be a career employee with significant experience in lender oversight. Such oversight may come from work at the Administration, working for one of the bank regulators, or providing advice to lending institutions on compliance with federal or state banking regulators. The Committee also mandates that the individual report to the Associate Administrator for Capital Access because that is the individual within the Administration with the greatest expertise in financial institutions.

The Committee clearly understands the political nature of the Office of Congressional and Legislative Affairs. As the primary liaison between Congress and the Administrator, the Administrator must be comfortable with the Assistant Administrator and have the same political beliefs and philosophy as the Administrator. Thus, insulating this individual from political influence would be oxymoronic and expects the Assistant Administrator to be a non-career employee. What the Committee does not expect is for the Assistant Administrator to totally lack understanding of Congress and the legislative process. In most agencies, the head of Congressional affairs is subject to Senate confirmation so the individual has significant experience, either in the public or private sector, in Congressional Relations. The Committee believes that the only way to ensure that the Assistant Administrator for Congressional and Legislative Affairs has experience dealing with Congress is to mandate the requirement. Under the Committee's approach, the Assistant Administrator is required to have five years of experience in a legislative capacity[81] working for Congress.

The Assistant Administrator for International Trade shall have five years of experience working on international trade matters. Such experience can come from assisting exporters or importers or working with organizations that promote or regulate international trade. As with other Assistant Administrators, the Committee believes that qualified individuals must have five years of experience to prove useful to small businesses needing the assistance of the Administration's Office of International Trade. The position is designed to assist small businesses and should not be politicized. Therefore, the Committee requires the Assistant Administrator to be a career employee.

The Assistant Administrator for Women's Business Ownership is currently a non-career position. The Committee decided not to change that but does not require the individual to be in the Senior Executive Service. The Committee expects that the Administrator will appoint an individual whose experience and qualifications in

[81] To ensure that the individual had actual legislative experience, the Committee requires that the individual be on the payroll of a Senator, House Member, or committee.

providing assistance to women entrepreneurs shall make the individual eligible for an appointment in the non-career Senior Executive Service.

E. General Counsel—§ 6(e)

The Administration always has had a General Counsel. The Committee simply codifies this practice to ensure that the Administrator receives appropriate legal advice from someone other than career attorneys within the agency.

F. Regional Offices—§ 6(f)

The Administration currently has ten regional offices that comport with the regional offices created by the Administrator of the General Services Administration. The Committee expects that the Administrator will maintain the ten regional offices unless a statute requires otherwise or the Administrator of the General Services Administrator reconfigures the federal regions. In sum, the Administrator may appoint Regional Administrators but has no authority to define regions in variance to those demarcated by the Administrator of the General Services Administration. The Committee expects that the Regional Administrators will report directly to the Associate Administrator for Administration and Management. The Committee further expects the Administrator to close the Office of Field Operations because the Regional Administrators will be reporting directly to the Associate Administrator for Administration and Management.

G. District Offices—§ 6(g)

The Administration already has district offices scattered throughout the United States. In some states, there is more than one district office. Subsection (g)(1) provides the explicit legislative authority to create district offices. Subsections (g)(2) and (3) permits the Administrator to combine district offices except that each state must have a district office. The only exception is that the territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands can be served from district office. The Committee intends that the Administrator convert the satellite office in Guam to a district office, serve Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from the Guam district office (through satellite offices), and the Guam district office shall no longer report to the district office in Hawaii but to the appropriate regional office of the Administration. The Committee does not intend that the restriction in subsections (g)(2) and (3) shall prevent the Administrator from creating satellite offices that do not provide the full services of a district office. Furthermore, the Committee would expect that the Administrator to utilize the services provided by grantees under the Small Business Development Center program and Women's Business Center program to provide services similar to satellite offices.

Subsection (g)(4) authorizes the appointment of district directors to head the district offices. Such individuals shall not be recompensed at levels beyond step 10 of GS–15 of the General Schedule. The Committee does not believe that the Administrator needs to pay higher salaries to attract competent district directors. Dis-

trict directors are specifically required to assist the Administrator in carrying out the requirements of the SBA and SBIA.

The Administrator is required to issue regulations providing for appeal of any decision that the Administrator delegates to the district director. In short, the Committee does not believe that it is appropriate for the district director to be the final arbiter of any decision delegated by Congress to the Administrator in carrying out the provisions of the SBA or the SBIA.

The Committee is concerned that district directors are not providing sufficient assistance to meet the current Administrator's goal of remaking the agency to deliver for small business. Subparagraph (C) requires the Administrator to develop goals that district directors must meet; if they fail to meet those goals, the Administrator is required to replace the district director. The Committee did not want to delineate specific goals but believes the Administrator is most capable of determining those goals. The Committee expects that the goals to be tailored to the small business community within a district. For example, the Administrator might only require a small increase in the number of loans but a larger increase in the number of government contracts awarded because the district has a high concentration of small businesses involved in federal procurement. Nor does the Committee expect that the Administrator will establish unreachable goals, such as a 100 percent increase in dollar financings under the SBIA, simply to remove a district director. The goals should represent reasonable incremental increases from prior years.

A district director that is removed does not lose his or her job. They are transferred to being a procurement center or commercial marketing representative at the same grade and salary for the first year after removal pursuant to subparagraph (D). The Committee rejects the notion that a district director is incapable of being a procurement center or commercial marketing representative. If they are the Administrator's chief agent within an area, they should be fully versed in all aspects of the programs of the Administration. Thus, the Committee believes that the district directors will make competent procurement center or commercial marketing representatives. Of course, this shall not be an issue if the district directors are competent and achieve their goals.

Paragraph (5) mandates that each district office have a district counsel. This is current practice of the Administrator. While providing services at the district level, the Committee does not believe that the work of the district counsel can assessed by someone who is not an attorney. Therefore, the Committee requires that the district counsel be assigned and report to the General Counsel.

Subsection g(6) authorizes the Administrator to hire sufficient number of business opportunity specialists to ensure effective guidance and oversight is provided to firms participating in the program authorized by § 8(a). The Committee expects that the number of business opportunity specialists will vary by district. Business opportunity specialists shall devote most of their time to assisting firms participating in the program created by § 8(a). The Committee recognizes that such individuals may not need to spend all or even most of their time on that program depending on the circumstances in the district office. Therefore, the Committee authorizes the district director, in conjunction with the Assistant Admin-

istrator for Minority Small Business and Capital Ownership Development, to reassign such individual to other appropriate tasks if the specialist's services are not needed by businesses participating in the program established pursuant to § 8(a).

Due to the increased importance of district directors meeting procurement goals, procurement center and commercial marketing representatives will report to the district directors even if the individual is not physically stationed at the district office as set forth in subsection (g)(7)–(8). This is particularly relevant for procurement center representatives that are located at a major procuring agency activity. For example, if a procurement center representative is stationed at the Defense Supply Center in Columbus, OH, that representative still will report to the district director for the Columbus, OH district rather than a regional administrator or an individual in the Administration principal office in Washington, DC. The Committee further requires that the Associate Administrator to assign at least one procurement center representative in each state.

H. General Personnel Authority—§ 6(h)

Paragraphs (1), (2), and (3) of this section transfers existing authorities from elsewhere in the SBA to § 6.

In preparing this legislation, the Committee had difficulty tracking down an organizational chart and the delegations of authority from the Administrator to subsidiary personnel. The Committee is concerned that Congress, the courts, the General Accounting Office, the Inspector General, and representatives of small businesses (particularly attorneys) are unable to uncover which Administration employees are empowered to take specific actions, particularly as it relates to an ongoing business. Paragraph (4) of § 6(h) authorizes the Administrator to delegate any function (except as provided by statute) to any subsidiary official 47 or employee of the Administration. Not all delegations are required to be codified in the Code of Federal Regulations but the procedures for determining those delegations that will codified must be set forth in the Code of Federal Regulations. The delegations not codified must be collated and placed in a prominent location on the Administration's website, i.e., an obvious link exists on the first page home page to those delegations of authority.

The Committee and members of the public are extremely frustrated with the recent redesign of the Administration's website. Links for descriptions of programs are no longer easily found. Other information requires significant searching if it can be found at all on the website. For example, the committee staff spent one hour looking for an agency organizational chart and found an abbreviated version in an Inspector General report. And since the Administration operates mainly through Standard Operating Procedures, a home page that makes it difficult to find these standard operating procedures provides little or no utility to small businesses. Therefore, paragraph (5) requires the Administrator to redesign the website so that delegations of authority, the Administration's organizational chart, links to homepages of each office, and standard operating procedures can be accessed through prominent links on the Administration's website homepage, www.sba.gov. The Committee also requires that any future redesign, after meeting

the initial statutory deadline, still meet the ease of use standards set forth in the paragraph.

Section 205(d) provides certain transition rules for Administration employees located in district offices. First, the Committee recognizes that some district directors have salaries in excess in of GS–15, step 10. The Committee does not wish to punish those individuals. At the same time, the Committee does not wish to have the Administrator to appoint all district directors to the Senior Executive Service thereby preserving a higher salary. Therefore, the Committee requires that the exception for district directors only apply to district directors whose salaries exceed GS–15, step 10 on July 1, 2003 (before the details of the Committee's bill were made available).[82]

Second, the Committee does not believe that the position of a deputy district director is necessary. Some district offices do not have district directors. Since all employees of the Administration located in a district office are required to assist the district director carry out responsibilities delegated by the Administrator, the deputy district director's primary function appears to be one of serving as the district director when that individual is not available. Such functions can temporarily be assigned to other individuals in the district office without requiring a dedicated employee devoted to that responsibility. The Committee bill then reassigns the deputy district director to a position as either a procurement center or commercial marketing representative at the same salary and grade. The Committee believes that this reassignment is better allocation of personnel resources in tight budgetary times. Furthermore, by reassigning the deputy district directors, the Committee is attempting to achieve its goal of increasing federal procurement to small business without requiring a significant concomitant increase in resources.

Section 207. Loan Programs

Section 207 amends various provisions of § 7 of the SBA. The Committee determined that only loan programs should be incorporated in § 7 of the Act so the Committee renames the section as "Loan Programs." Subsection 207(a) amends the guaranteed loan programs authorized pursuant to § 7(a) of the SBA. Subsection 207(b)-(c) amends the disaster loan program. Subsection 207(d) amends the microloan program authorized by § 7(m) of the Act. Subsection 207(e) makes the following conforming changes to the SBA: repeals and reserves subsections d, h, j, and k of § 7. Finally, subsection 207(f) amends the predisaster mitigation program.

Section 207(a)—Small Business Loan Program.—The Committee makes numerous changes to the business loan program established by section 7(a) of the Act. These changes are explained below (references are to new sections within the SBA and not to § 207 of the bill). The Committee also repealed the provisions authorizing loans for energy-saving equipment, to organizations representing the disabled, and veterans under § 7(a). The Committee took this action because the Administrator already is empowered to make loans for energy-saving equipment and veterans (no special authority is

[82] Similar type look-back provisions are widely used in the Internal Revenue Code to prevent individuals from basing transactions on expected changes in the law.

needed). The Committee repealed the authority to make loans to organizations representing the disabled because the limited funds made available under this section should go to disabled individuals that are starting for-profit businesses and not charitable organizations. Finally, the Committee repealed the provisions related to loans for solving the Year 2000 computer problem. Those problems were resolved three years ago and the Committee see no point in continuing authorization for that program.

A. Sound and Secure Requirement—§ 7(a)(5)

The Committee does not alter the existing requirement that loans guaranteed by the Administrator should be sound and reasonably secured to assure that the small business concern repays the loan. Existing law also requires that the Administrator resolve any reasonable doubt on repayment in favor of disabled persons (as defined in the SBA and not the definition used in the Americans with Disabilities Act). In an effort to revitalize the manufacturing sector, the Committee also now requires that the Administrator resolve reasonable doubts on repayment in favor of small manufacturers as well. The Committee does not intend the changes made in this paragraph to alter the Administrator's existing interpretation of the phrase "any reasonable doubt regarding the likelihood of repayment shall be resolved in favor of the applicant".

The bill also modifies the Administrator's existing practices related to the collateral requirements. Numerous small businesses are rejected for Administration-guaranteed loans because they lack adequate collateral. This practice makes no sense in the view of the Committee. An adequately collateralized borrower should be able to obtain credit elsewhere.[83] Thus, the Committee added a requirement that prohibits the Administrator from rejecting an applicant solely on the basis of inadequate collateral if there is a fair chance that the loan will be repaid. The Committee authorizes that the Administrator to require other assets of the owner be used as collateral to fulfill the requirement of adequate collateral. Again, the Committee intends that the Administrator not require full collateralization but sufficient collateral and expected cash or existing cash flow to ensure repayment of the loan. Nor does the Committee intend to limit the Administrator's authority to require greater collateral for new businesses that do not have a cash flow history than for existing businesses with demonstrated cash flows. However, the Administrator shall never require collateral that exceeds the amount necessary to fully secure the loan.

B. Level of Participation in Guaranteed Loans—§ 7(b)(6)

Due to the rewrite of this section of the SBA, the Committee incorporated a parenthetical that the levels of participation in guaranteed loans also applies to loans made under the Preferred Lenders Program. This addition of the parenthetical is not intended to change existing practice on the participation levels for Preferred Lenders.

[83] If a borrower with adequate collateral cannot obtain credit elsewhere, one must assume that the business plan is sufficiently flawed that the lender determined repayment is so unlikely that even with collateral it is not worth the risk of making the loan. The Committee's view on collateral should not change the basic test—that the business plan demonstrates the likelihood that the loan will be repaid.

In an effort to increase the number of guaranteed loans made in rural areas and promote economic development, the Committee determined that it would be appropriate to increase the participation level to 90 percent for all from the existing participation levels of 75 percent and 85 percent set forth in paragraph (6). The Committee limited the increase only in those rural areas, as defined by the Consolidated Farm and Rural Development Act (in an effort to maintain consistent definitions throughout the United States Code on rural areas) that had loan amounts less than the statewide average. In other words, the participation levels only would increase if the rural area had fewer loans and total dollar value than the rest of the state in which the rural area was located. If the rural area exceeds the statewide average in both number and dollar value, the increased participation level would not apply.

C. Maximum Loan Amounts—§ 7(b)(7)

The Committee only makes one change to the maximum loan amounts. It increases the total loan amounts for international trade loans to $2,000,000. Since manufacturers tend to be most adversely affected by international trade competition and their capital needs tend to be higher than retail or service businesses, the Committee determined that it would be appropriate to raise the maximum amount of such loans. The Committee also raised the amount of such loan that can be used for working capital to $1,200,000. The Committee simply kept the current statutory ratio between maximum loan amount and working capital to arrive at the $1,200,000 figure.

D. Interest Rates—§ 7(b)(8)

The Committee does not change the existing law with respect to interest rates for any of the loan programs under § 7(a). The Committee simply collects them in one paragraph of the section.

The Committee eliminated the definition of "handicapped" individual and substituted the term "disabled." This comports with existing practice since the passage of the Americans with Disabilities Act. The Committee bill cross-references the definition of disabled in the Americans with Disabilities Act except that it maintains the existing proviso in the SBA that the disability must limit the individual's selection of any type of employment for which the individual qualified. The Committee maintained this proviso because the definition of the term "disabled" in the Americans with Disabilities Act is significantly broader than that used in the SBA and would allow many Americans that otherwise could obtain gainful employment to start a business with significantly low interest rates (3 percent). Given the limited availability of funds, the Committee believes that the low interest rates should be available only to those whose handicap is sufficient that it truly limits employment opportunities. In sum, the Committee does not intend for the Administrator to change current practice with respect to the severity of the disability that would qualify for the reduced interest rate on loans.

The Committee also adds service-disabled veterans to those individuals that can obtain the 3 percent interest rate on § 7(a) loans. While service-disabled veterans may meet the definition of disabled

person, the Committee determined that a specific citation to service-disabled veterans would eliminate any legal questions.

E. International Trade—§ 7(a)(16)

All § 7(a) loans can be used to refinance existing debt except for international trade loans. The Committee determined that the restriction did not make sense especially since businesses harmed by unfair international competition will be more competitive if their debt service payments are lower. Therefore, the Committee authorized businesses otherwise eligible for an international trade loan to use it for refinancing of debt but only to the extent that the Administrator determines the applicant's existing debt is not structured with reasonable terms and conditions. The Committee would expect that the Administrator examine the interest rate being charged relative to the interest rates generally available for similar businesses to determine whether the terms and conditions are not reasonable.

To obtain an international trade loan, the applicant must demonstrate that the business either is engaged in international or adversely affected by international trade. The Committee added a requirement that Administrator must accept a finding of injury validly issued by the International Trade Commission as sufficient proof of injury attributable to foreign competition. The primary purpose of the International Trade Commission is to determine whether a particular industry has suffered as a result of foreign competition. If an applicant is in an industry for which the Commission has made such a finding, the Committee determined that it would be illogical to burden a small business applicant to prove what another federal agency has already found. The Committee does not intend that a finding by the International Trade Commission is the only method for proving injury. A small business still may use other evidence to demonstrate injury in the absence of a finding by the International Trade Commission that its particular business was adversely affected.[84]

F. Certified Lenders Program—§ 7(a)(19)

The SBA authorizes the creation of a Certified Lenders Program. The Committee bill only makes one change in the Certified Lenders Program and that is to require the Administrator to set forth the criteria for designation as a certified lender in regulations codified in the Code of Federal Regulations. The Committee has no objection to the Administrator promulgating its existing standards as set forth in a standard operating procedure as the criteria. The Committee reminds the Administrator that promulgation of rules requires compliance with the notice and comment requirements in amended § 4 even if the Administrator simply is codifying in regulations already extant policies.

[84] There are two likely situations in which this could happen. First, the International Trade Commission makes an affirmative finding that an industry was not adversely affected by international competition. That finding does not necessarily preclude a narrower finding that some of the businesses within a particular industry may be adversely affected by international competition. Second, no case may be brought before the International Trade Commission. In such circumstances, a small business still could prove injury.

G. Minority Business Development Program Participants—§ 7(a)(20)

The Committee only made one change to this paragraph. In the rewrite of the Act, the Committee eliminated § 7(j) of the SBA. Therefore, the Committee struck the reference in this paragraph to § 7(j).

H. Annual Fee—§ 7(a)(23)

Current law authorizes the annual fee of 0.25 percent of the outstanding balance of the loan. That fee would rise to 0.5 percent on October 1, 2003. The Committee extended the reduce fee of 0.25 percent to October l, 2005. The Committee rejected the idea of permanently reducing the fee because the Committee wishes to periodically review the effect that the fee reduction has on the subsidy rate that must be calculated pursuant to the Federal Credit Reform Act and take appropriate actions at that time. Because the Committee's reauthorization lasts for two years, the Committee simply extended the fee reduction for two years. The Committee expects to reexamine this issue again during the next reauthorization.

The Committee also authorizes the Administrator to contract out the assessment and collection of fees. Compensation for services may include any interest on fees collected while under the contractor's control before remission to the Administrator. Simply put, the Committee intends the Administrator to have the power to compensate the contractor on the float just as the Committee authorized such compensation to the fiscal transfer agent pursuant to § 5. The citation to the compensation of the fiscal transfer agent is not intended to require the Administrator to develop an identical compensation system for both functions.

I. Notification Requirement—§ 7(a)(24)

The Committee is concerned with the liberties that the Administrator has taken under the pilot program authority in the SBA. Therefore, the Committee is adding a requirement that the Administrator inform the Committee of the establishment of any pilot program under § 7(a).

K. Limitation on Conducting Pilot Projects—§ 7(a)(25)

The Committee is highly troubled by the increasing utilization of pilot programs by the Administrator to avoid obtaining Congressional approval for changes in the business loan program. The Committee is convinced that the current restrictions set forth in the SBA on pilot program establishment are inadequate. Therefore, the Committee imposes stringent new requirements on the establishment of new pilot programs and the continuation of existing pilot programs.

The Committee did not change existing requirements that only 10 percent of the total number of loans may be made in a pilot program. The Committee made establishment of new pilot programs more stringent by imposing total dollar limitations of 5 percent for pilots established after the enactment of this Act and 15 percent for pilots in existence at the time of enactment. Calculation of the total dollar amount of loans available for use in pilot projects should be relatively simple because the Administrator will know the subsidy rate and the amount of money appropriated for the

business loan program in any given year. The Administrator then would set aside those specific dollar values for pilot programs.

The bill also imposes a time limitation of three years on the operation of any pilot program and for pilots in existence on the date of enactment they can also last three more years. The Committee is of the opinion that any pilot program that goes beyond three years in duration is not a pilot program but should be authorized by Congress.[85]

The Committee intends that simply changing the name or some of the conditions of a pilot program does not constitute a new pilot program. In the Committee's view, a new pilot program is one that is completely new in structure and purpose from an existing pilot program.

Even though the SBA, as amended by this bill, mandates notice and comment rulemaking, the Committee is concerned that the pilot programs were not issued through rules but procedural notices. Such statements of policy do not necessarily require notice and comment rulemaking under the Administrative Procedure Act.[86] Therefore, the Committee adds an additional mandate that any pilot program only be developed after notice and comment rulemaking. This will prevent the Administrator from instituting pilot programs without the input of small businesses and lenders. The Committee intends that the Administrator must promulgate regulations governing each pilot program that is currently in existence although the Administrator may continue to operate the pilot program prior to the codification of the pilot's rules in the Code of Federal Regulations. However, for pilot programs established after the date of enactment, the Committee prohibits the operation of the pilot program before the rules are codified in the Code of Federal Regulations. For purposes of determining whether the regulations are codified in the Code of Federal Regulations, publication in the Federal Register of the regulations as amendments to Title 13 of the Code of Federal Regulations is sufficient. The Committee recognizes that the Code itself is published annually and the Administrator does not have to wait until publication of the next annual volume of Title 13 to meet the standard for codification.

L. Low Documentation Loan Program—§ 7(a)(27)

The Administrator currently operates a low-documentation loan program under existing pilot program authority. The program has been successful and the Committee believes that the low documentation loan program should be made permanent. New paragraph 27 permanently authorizes the low documentation loan program. Under the Committee's bill, a low documentation loan is one that requires less documentation than would otherwise be required to issue a guarantee for a loan under § 7(a). The Committee definition is not intended to alter existing documentation standards for this program but the Administrator is at liberty to reduce documentation requires beyond those currently in place. The Committee also increased the size of the loan that can be made under the low documentation loan program from $100,000 to $150,000. An in-

[85] Cf. *Riverbend Farms, Inc.* v. *Madigan*, 958 F.2d 1479, 1483 (9th Cir.), cert. denied, 506 U.S. 999 (1992) (noting that same emergency in existence every week for 30 years no longer emergency but standard practice of agency).

[86] See *Appalachian Power Co.* v. *EPA,* 208 F.3d 1015, 1021 n.13 (D.C. Cir. 2000).

crease in the amount of the loan also should not require an increase in the amount of documentation required. The Committee requires promulgating rules for this program. To ease administrative burdens on the agency, the Administrator may publish the existing low documentation procedures to comply with the notice and comment requirement.

M. Preferred Lenders Program—§ 7(a)(31)

The SBA authorizes the Administrator to designate certain lenders as preferred lenders in § 7(a)(1)(C). The existing provisions of the SBA are, in the view of the Committee, inadequate to establish a preferred lender program. The Committee's bill adds a new paragraph 31 to § 7(a) establishing the preferred lenders program.

The basic premise of the preferred lenders program is that the Administrator delegates full responsibility to the lender to originate, service, and liquidate a loan. Designation as a preferred lender authorizes the lender to issue a guaranteed loan, service and collect on the loan, and liquidate the loan without prior approval of the Administrator. The Committee's bill does not alter any of these practices.

Given the responsibility accorded to preferred lenders, the Committee believes that certain minimum statutory criteria must be met before the Administrator can designate a lender as preferred. The bill requires that the lender: (1) demonstrates knowledge of Administration rules and programs; (2) has the ability to process, close, and service loans; and (3) has satisfactory performance which is demonstrated by a default rate that does not exceed the national (except if 20 percent of the lender's portfolio is made to designated entities in which case it is 2 percent points above the national default rate).

The Committee limits the operation of a preferred lender to the district offices designated by the Administrator. For example, Ohio has 3 district offices. A preferred lender that only wishes to operate in the area served by the Cleveland district office will apply for preferred lender status in that office. On the other hand, a preferred lender that wishes to serve the Cleveland, Columbus, and Cincinnati district offices would have to apply to the Administrator and receive separate approval to act as a preferred lender in each district office.

The Committee recognizes that the process of applying for preferred lender status on a district-by-district basis makes no sense for large national lenders. This imposes undue paperwork burdens on lending institutions and uses scarce Administration resources without obtaining any significant benefit. Therefore, the Committee determined that a national preferred lenders program would makes sense so that financial institutions could obtain preferred lender status without applying on a district-by-district basis. A lender with a "national preferred" designation is able to perform all the functions of a preferred lender in any district served by the Administrator without having to make a separate application.

In addition to the other standards needed to be a preferred lender, a national preferred lender must demonstrate certain experience as a preferred lender. The Administrator is prohibited from granting the designation of national preferred lender to any financial institution unless it has operated as a preferred lender in 5

States or 10 district offices[87] and has made at least 50 loans as a preferred lender for each of the past 3 years. National preferred lenders also must have standards for centralized approval of loans and meet other servicing and liquidations standards established in Administrator regulations. The Committee expects that such standards will be more rigorous than apply to preferred lenders. National preferred lenders also must have better performance than the average lender with respect to default rates, loan currency, and recoveries on liquidations and foreclosures.

The Committee bill prohibits the Administrator from awarding a "national preferred" designation if the lender failed to receive a substantially satisfactory compliance rating in its most recent audit and examination or a substantially satisfactory rating in a follow-up review. The Committee further expects the Administrator to continue its annually review national preferred lenders to, at a minimum, the same level of scrutiny applied to preferred lenders. The Committee mandates that the Administrator give the national preferred lender the opportunity to cure any defects before suspending or revoking its status. Such suspension or revocation shall have no effect on any guarantee issued prior to the suspension or revocation.

The Administrator is authorized to delegate the responsibility for designating national preferred lenders to subsidiary officials within the Administration. Due to the program's national scope, the Committee does not believe that it is appropriate for Administration employees in district or regional offices to have the authority to designate national preferred lenders.

N. Simplified Form for Small Guarantees—§ 7(a)(32)

Since 1993, efforts have been undertaken to reduce the size of the loan applications, particularly for smaller loans. The Committee fully concurs with these ongoing efforts. The Committee directs the Administrator to develop a uniform and simplified loan form for loans of $50,000 or less. In developing this loan form, the Committee expects that the Administrator will use, as a starting point, its ExpressLoan form. The Committee does not intend for the Administrator to develop a different form if the ExpressLoan application is sufficiently uniform and simple that all lenders authorized to operate in the 7(a) loan program could use the form.

O. Special Rule on Affiliation—§ 7(a)(33)

Obtaining a guaranteed loan pursuant to § 7(a) of the SBA requires the business to be small. The Administrator determines whether a business is small by reference to its size standards in 13 C.F.R. Part 121. Those size standards exist for every industry through classification within the North American Industrial Classification System. No alternative size standard exists. Thus, a business that does not meet the size standard established for its North American Industrial Classification System code will not be eligible for a loan under § 7(a).

That restriction does not apply to businesses seeking financial assistance available under the SBIA. The Administrator created al-

[87] The Administrator is not at liberty to modify mix or match these two standards, i.e., four states and six district offices does not satisfy this standard.

ternative eligibility standards based on net worth and net income. The net income and net worth standards potentially allow more concerns to receive assistance.

The Committee did not adopt a requirement mandating the establishment of a separate financial standard. Instead, the Committee modified the affiliation standard to allow a business that, if it is affiliated with another business and therefore determined to be something other than small, still would be eligible for a loan if it had no financial recourse to its affiliates for repayment of any of its debt.

Given federal procurement law, large businesses have an economic incentive to create smaller subsidiaries that, absent affiliation rules, would be eligible to compete for contracts that have been set aside for small business. It is perfectly understandable then that the Administrator would carefully scrutinize potential affiliation requirements to ensure that only "real" small businesses are receiving their fair share of government contracts.

This policy rationale is far less compelling in the operation of the § 7(a) loan program. Large firms have no economic incentive to qualify as small businesses for purposes of the § 7(a) loan program. The statutory limit on loan size makes it highly unlikely that a large business would ever benefit from access to the loan limits set out in § 7(a). Therefore, the Committee's modification, solely for purposes of the § 7(a) loan program, strikes the appropriate balance between providing greater financial assistance to small businesses without unduly harming the competitive stature of small businesses in the federal procurement arena.

Section 207(b)—Disaster Loan Program.—The Committee completely reorganized the § 7(b) of the SBA but made only a few substantive changes in the operation of the disaster loan program. Before addressing those, it is useful to discuss the organizational changes to this subsection.

In examining § 7(b), the Committee was faced with a welter of long paragraphs with multiple provisos some of which may have been inconsistent with other provisos within the paragraph or with other parts of the subsection. In addition, there are a plethora of special rules that apply to disasters for specific periods of times 20 or even 30 years ago. The Committee approached the rewrite of § 7(b) with the same trepidation that Hercules must have faced in cleaning the Augean stables. But unlike Hercules, the Committee has no capability to redirect 55 rivers through statutory language. The Committee did the next best thing by eliminating no longer active provisions, collecting related provisions into the same paragraphs, and rewriting the subsection in manner that makes the requirements for the disaster loan program clear.

The most significant change to the subsection involves the removal of all provisions related to disaster loans made for disasters prior to October 1, 1982. The Committee's striking of those provisions is not intended to modify any loan issued under the rules applicable at the time the disaster loan was made. The Committee simply determined that it would be inappropriate to reenact the SBA with no longer relevant disaster loan standards.

The Committee also reorganized the subsection by transferring related material to the same paragraph or subparagraph. As an example, all of the existing special rules related to loan amounts are

now collected in paragraph (1)(C). Similarly, the Committee transfers to paragraph (11) all of the rules related to the calculation of interest rates for disaster loans for disasters occurring after October 1, 1982.

A. Loan Amount—§ 7(b)(1)(B)

This subparagraph was revised to clarify that the loans (subject to other limitations on the size of the loans) should be equal to 100 percent of the loss less any amount covered by insurance or some other financial arrangement. The Committee determined that it would be inappropriate for the Administrator to pay an applicant 100 percent of the loss when the applicant received reimbursement, in whole or in part, from an insurance company or some other indemnifier.

B. Special Rules—§ 7(b)(1)(C)

The requirements on special rules on loan amounts was amended to clarify that the Administrator must make disaster loans of certain minimum sizes unless the applicant's loss, after reimbursement by insurer or other indemnifier, reduces the loss below that level. In such cases, the Administrator is authorized to make payment of the actual loss without regard to the minima specified in this subparagraph.

C. Economic Injury Disaster Loans Loan Authority—§ 7(b)(2)(A)

The Committee added the Administrator's authority to extend economic injury disaster loans to counties contiguous with the counties that are specified in a disaster declaration. After the incidents of September 11, 2001, it became evident that counties contiguous to the areas declared a disaster area also suffered. This gives the Administrator the authority to make economic injury disaster loans to those areas without specifically including them in a disaster area. For example, the Administrator, at his discretion, would have the power to make economic injury disaster loans available to small businesses in Prince George's County, MD even though only the District of Columbia and Montgomery County, MD had been included in the disaster declaration after the events of September 11, 2001.

D. Special Rule To Determine Small Concerns—§ 7(b)(4)

The events of September 11, 2001 demonstrated that the Administrator could respond (albeit with some legal creativity) to a "national emergency" situation without declaring the entire United States a disaster area. When the Administrator expanded the economic injury disaster loan program, one of the issues related to size standards. Numerous applicants were turned down because they were to be other than small. The Committee requested that the Administrator develop a broad size standard applicable to all businesses. This would ensure that a small business in manufacturing with 500 employees and a restaurant with 70 employees both would be eligible for loans. The Administrator was unable to make that regulatory change for reasons that remain unclear to the Committee. Therefore, the Committee determined that one size stand-

ard should apply to all businesses for purposes of the disaster loan program without regard to industrial classification.

The Committee selected 500 employees as the appropriate standard. The standard is large enough that a manufacturer and a successful restaurant both will be eligible for disaster assistance in the same disaster. Moreover, once the number of employees exceeds 500, the Committee believes that the business has sufficient resources to recover from a disaster without the assistance of the Administration.

E. Additional Disaster Areas—§ 7(b)(7)

Although the Administrator did a spectacular job in scrambling to create a nationwide relief program after the events of September 11, 2001, that effort demonstrated a certain lack of preparedness on the Administrator's part. The Committee does not fault the Administrator from having the foresight to predict an event like September 11, 2001 and the economic fallout that resulted. Nevertheless, the Committee believes that the Administrator should be prepared if a similar event occurs in the future. The Committee mandates the development of regulations specifying the circumstances under which the Administrator will expand the economic injury disaster loan program beyond the counties that are within the declared disaster area or any contiguous to the declared disaster area. While the Committee fervently desires that such authority never be exercised, the Committee believes that an abundance of prudence suggests such regulations should be formulated.

F. Maximum Loan Amount—§ 7(b)(9)

There is some confusion as to the maximum loan amount that can be made available to a single borrower under subsection (b). The SBA provides a standard of $500,000. Administration regulations authorize a maximum limit of $1,500,000. The Committee does not believe that setting a statutory maximum is appropriate. Rather, the Committee authorizes the Administrator to develop such maximum amount. The Committee's approach is not intended to mean that the current regulatory limit is inappropriate. The Committee's bill also mandates that the Administrator establish standards for waiving the maximum amount in order to speed economic recovery.[88]

G. Notice to Borrowers—§ 7(b)(12)

As already noted, the Committee has received numerous concerns about the sale of disaster loans by the Administrator. In addition to the restrictions imposed on the sale of such loans in revised § 5, the Committee also believes that more information about the sale of the loan should be given to the borrower. Paragraph (12) adds a new requirement disclosure requirement when applying for a disaster loan and upon disbursement. The Committee believes that such notice is appropriate since a lending institution participating under § 7(a) would have to provide information on the rights of the borrower and collection practices pursuant to regulations

[88] The Committee is of the opinion that the waiver standard for source of major employment is not a particularly useful standard except in sparsely populated areas. For example, no business affected by the events of September 11, 2001 in Washington, DC would be considered a major employer in the Washington, DC area.

promulgated by the federal banking regulators. Thus, the Committee requires that the Administrator provide borrowers with information concerning collection practices, sales of loans, potential effect of loan sales on borrowers, rights of borrowers before and after a loan sale including any other applicable federal laws. Although intended to mirror the concepts underlying the Truth-in-Lending Act, the Committee does not intend that the disclosure be necessarily be in as great a detail as required of lending institutions. Furthermore, given the targeted audience, the Committee would expect that the notice be prepared in "plain English."

Section 207(c)—Extension or Renewal.—The Committee amended subsection 7(c) by removing all of the special rules located in that subsection and simply reorganizing it to only include matters related to extension or renewal of disaster loans. The Committee's action is not intended to change current practices on extensions or renewals (except as elsewhere provided in the Committee's bill).

Section 207(d)—Microloan Program.—The Committee made only minor changes to the microloan program established by § 7(m) of the SBA. The Committee did not find it necessary to undertake any major reorganization other than breaking up longer paragraphs into smaller paragraphs to reduce the number of clauses and subclauses in the subsection. The Committee did rename the welfare-to-work aspect of the microloan program as the welfare-to-entrepreneurship program. The Committee's redesignations are not intended to change the operation of the program except as otherwise specified in legislative language. Those changes are discussed below.

The Committee modified the eligibility standard for participation in § 7(m)(3) by authorizing the Administrator to select intermediaries that have the equivalent of one year of experience of making microloans to small business concerns. Other equivalent experience also is permitted under the Committee's bill. The changes were made to expand the potential universe of microloan intermediaries.

The Administrator, in selecting intermediaries, is required to give preferences to intermediaries that make loans of less than $10,000. To assist the very smallest of manufacturers, the Administrator is exempted from that preference requirement if the intermediary is primarily serving small manufacturers. The Committee made this change recognizing that small manufacturers may require loans (for equipment and the like) that exceed $10,000.

Current statutory requirements prohibit the Administrator and intermediaries from providing assistance to small business concerns prior to the issuance of a microloan. In many instances, technical advice and assistance prior to receiving an actual loan may be as important if not more important than advice after a microloan is issued. Intermediaries testified that they dissuade many people from starting small businesses who would not make good entrepreneurs. Therefore, the Committee authorizes intermediaries to make assistance available prior to lending.

While the Committee is convinced that intermediaries are extremely well-qualified and provide outstanding advice to small businesses, intermediaries cannot be experts in every field. Small businesses may need advice and assistance that intermediaries and small business development centers cannot give. Therefore, the

Committee permits intermediaries to contract out the provision of technical advice without any limitation. Although the Committee lifted the limitation, the Committee still expects intermediaries to provide the bulk of technical assistance to its microbusiness customers.

The Committee requires that the existing standards for loan loss reserve funds be codified in the Code of Federal Regulations. Changes to the loan loss reserve fund would have to comply with the basic notice and comment requirements set forth in revised § 4 of the Act.

The Committee raised the dollar limit on loans that can be made by intermediaries to borrowers from $35,000 to $50,000 in § 7(m)(9)(B). The Committee determined that a larger loan amount would be more beneficial to the very smallest manufacturers that would utilize the program.

The Committee does not change the rate of interest that intermediaries may charge small business borrowers. The Committee raises the dollar value from $7,500 to $10,000 for determining the interest rate applicable to borrowers in § 7(m)(9)(C)(i)–(ii) in order to account for changing economic conditions.

Currently, loans under the microloan program are short-term. By deleting all references in § 7(m) to short-term, the Committee intends that intermediaries are authorized to make longerterm loans and create revolving credit lines.

The Committee struck the language authorizing the supplemental grant program pursuant to § 7(m)(4)(F) in the current SBA. That provision is no longer operational and the Committee simply eliminated it to reduce unnecessary clutter in the SBA.

Section 207(e)—Repeal of Certain Provisions of Section 7.—This subsection repeals portions of § 7 that are no longer operational including subsections (d), (h), (j), and (k). The Committee reserved these subsections for future modifications to the SBA and to keep other subsections with their current designations. This ensures that cross-references elsewhere in the SBA will be accurate.

Section 207(f)—Continuation of Temporary Predisaster Mitigation Program.—This section continues the predisaster mitigation program through September 30, 2004. The Committee eliminated the provision from subsection 7(b) because it is not a permanent program under the SBA and should not be incorporated into the SBA. The Committee does not intend that the Administrator make any changes as a result of this conforming change in the SBA.

Section 207(g)—Effective Date.—This subsection makes clear that the changes made in the Committee's bill only apply to loans and grants made after the enactment of the Act. Except as otherwise provided in law, the Committee does not intend that any of the changes made in this bill will have any affect on the terms or conditions of any loan or grant made prior to the effective date of this bill.

Section 208. Government Contract and Business Development Assistance

As already noted, the program established pursuant to § 8(a) (hereinafter "the 8(a) program"), is the successor to programs during World War II and the Korean War that were designed to provide small businesses with federal procurement contracts. Section

8(a) mandates that federal agencies contract with the Administrator who will in turn subcontract the performance to small businesses. Section 8(b) addresses the managerial assistance that the Administrator shall provide to 8(a) participants (as well as other small businesses).[89]

During the 1990's, the Administrator entered into agreements with other federal agencies authorizing the agencies to contract directly with 8(a) participating firms. The Committee does not believe the Administration ever had such authority.[90] By delegating the entire contracting function to the procuring agency, the Administration undercuts its statutory mission to advance the contracting opportunities available for small businesses participating in the 8(a) program. A report by the Inspector General concurs with the Committee's conclusion.[91]

A. Contracting Authority—§ 8(a)(2)

The Committee's approach returns the program to its original mode of operation in which the procuring agency contracts with the Administrator who in turns contracts with an eligible small business participant. Such contracts shall be entered into with the intent of enhancing the competitive viability of the 8(a) participants. The Administrator must ensure that any subcontracts are fairly priced and the contractor is capable of fulfilling the subcontract in a manner that improves the overall likelihood of success of the firm.[92] Although the Administrator is required to enter into contracts with other agencies and subcontracts with 8(a) participants, the Committee authorizes the procuring agency, other than awarding the subcontract, to administer the contract, including performance review and payment. The compromise enables Administration employees do what they do best—advocate on behalf of small businesses in the federal procurement arena and delegate contract administration to the cadre of federal contractors.

The Committee's bill repeals any existing delegation authorizing the procuring agency to enter into contracts with 8(a) firms. By requiring any award after the date of enactment to only be made through a subcontract, the Committee intends that no future dele-

[89] The Committee only addresses those paragraphs of section 8(a) changed in the Committee bill. Any paragraph not addressed simply means that it is unchanged from existing law (except to the extent that the provisions were moved and redesignated in § 8).

[90] Section 8(a) provides: "It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon. * * * (B) to arrange for the performance of such procurement contracts by negotiating or other letting subcontracts to * * *." 15 U.S.C. § 637(a)(1)(A)–(B).

[91] OFFICE OF THE INSPECTOR GENERAL, UNITED STATES SMALL BUSINESS ADMINISTRATION, Agency Management Challenges FY 2002 at 27 (January 16, 2002). A similar report in FY 2003 concurred with the findings made by the Administrator in FY 2002.

[92] For example, the Administrator could bid on a project from another agency at a price that might if performed by the subcontractor not allow the subcontractor to recover the costs of the contract. The Committee believes that enhancement of viability requires the Administrator to select another contractor, who because of their cost structure, would have a greater opportunity to recover the costs associated with performance. This represents only an example of the type of situation the Administrator should avoid in issuing subcontracts. The example should not be read as requiring the procuring agency or the Administrator from issuing a contract or subcontract at anything other than a fair marker price.

gation of authority be made unless authorized by an act of Congress.

The bill requires the Administrator to identify potential awardees within three calendar days. This requirement is necessary to enable the procuring agency to find other sources without unduly delaying the acquisition process. Extensions beyond three days may be given by the procuring agency but the Committee expects that such extensions will be used sparingly. The Committee intends that the operation of the 8(a) program not impose further delays in an already lengthy contracting process. In the view of the Committee, such delays generate even greater incentive for contracting officers to avoid using participants in the 8(a) program thereby defeating its purpose.

Subparagraph (I) requires that a competition among participants be performed in the district office in which a substantial portion of the work will be performed. The Committee adopted this approach in line with its overall interest in delegating federal procurement advocacy from the Administration's principal office to its district offices. In the view of the Committee, this should improve contact between the Administration and small businesses bidding on federal contracts.

B. Sole Source Contract Negotiation—§ 8(a)(4)

Under the 8(a) program, a contractual relationship exists between the Administrator and the procuring agency. Federal procurement law provides that the procuring official and the contractor undertake negotiations. The Committee does not intend to modify that fundamental tenet of government procurement law. Nevertheless, the Administrator is not an expert in each area that the Administrator could contract with other federal agencies. To ensure that the terms and conditions of the contract between the procuring agency and the Administration are realistic for small business subcontractors, the bill mandates that the Administration consult with the 8(a) subcontractor or subcontractors (to the extent that is possible and practical) on terms and conditions of the contract.

C. Economic Disadvantage—§ 8(a)(6)

Participants in the 8(a) program must be socially and economically disadvantaged. In determining economic disadvantage, the Administrator shall develop standards that compare the net worth of business owners who are claiming economic disadvantage to the net worth of owners who are not socially disadvantaged. Determinations of economic disadvantage cannot be performed in a vacuum; rather economic disadvantage must be adjudged by the needs of the industry. For example, the capital needs of a steel mill are very different than those of a travel agency. An individual may not be economically disadvantaged when trying to start a restaurant but may be economically disadvantaged in starting a food-processing firm.

Given the Committee's concerns about the adequacy of capital for 8(a) participants and to expand the type of businesses willing to apply, the bill prohibits the Administrator from establishing a minimum net worth standard of less than $750,000. The Committee does not believe that, in today's economy, a net worth of $750,000

exclusive of home or business is a significant sum for someone seeking to grow a business.[93]

Calculations of economic disadvantage shall exclude the program applicant's equity in a principal residence and the business. Applicants for the 8(a) are individuals not businesses. If the calculation of net worth includes the value of a residence and the business owned by the applicant, only those businesses with relatively high debt to equity ratios will enter the program. Given their financial structure, these businesses are unlikely to succeed in obtaining federal government contracts[94] much less in the commercial sector. The Committee concluded that it made no sense to limit the possible number of program participants that can grow their businesses and improve economic development in their communities by restricting participation to businesses with the worst debt-equity ratios. For this reason, the Committee excludes, in the calculation of net worth the value of a residence and the business itself.

The Committee also eliminates the requirement that the individual be economically disadvantaged in each year of program participation. Under current law, success is penalized by graduation from the program due to a finding that the program participant is no longer economically disadvantaged (and that may be after only one year). Thus, the only businesses that remain in the program are those that are not very successful. The program is roundly criticized because many of the businesses that survive for the entire nine-year length of the program do not survive after graduation. Of course, that becomes a self-fulfilling prophecy by eliminating the most successful businesses (through a finding that the individual is no longer economically disadvantaged) from further participation in the program. The Committee corrects this by allowing businesses to grow and remain in the program. In the Committee's view, this single change will dramatically improve the success rate of the 8(a) program.

D. Annual Certification—§ 8(a)(7)

The Committee does not modify the requirement of annual certification that the 8(a) participant certify compliance with program requirements. The Committee simply changes the location for the filing of such certification to the district office where the business is headquartered from the principal office of the Administration. Given the devolution of many program functions to district office personnel, the Committee believes that the change makes eminent sense.

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[93] Many franchisors require significant unencumbered net worth before considering an applicant. For example: Jiffy Lube requires $400,000; Circle K Convenience Stores require $500,000 net worth and $200,000 in liquid assets; Gold's Gym requires net worth of $800,000 and $300,000 in cash; and Dairy Queen requires $500,000 and liquid assets of $300,000. No one would consider an owner of any of these franchises to be a big business. Yet, under the Administration's existing net worth standards, no 8(a) participant would be eligible to own any of these franchises and enter the program. Obviously, the net worth requirements will vary and this is only a representative sample of the thousands of franchises. If the standards are inadequate to enable even single unit franchisees in the program, the Committee is convinced that the standards certainly are too low for participation by many small manufacturers who require available capital many times that of service businesses.

[94] The Conference does not change the basic requirement that federal contractors (including 8(a) participants) must be financially capable of performing the contract.

E. Change of Ownership and Control—§ 8(a)(7)(F)

The Committee intends that small businesses participating in the 8(a) program shall be permitted to maintain their status if there is a transfer of ownership with the caveat that the new owner also must be eligible to participate in the program. Review of ownership changes that may entail a redetermination of the participant's social and economic status must be conducted by the Assistant Administrator for Minority Small Business and Capital Ownership Development. All other reviews of program participation after a change in ownership shall be delegated to the district director. For example, a program participant purchased by another program participant in the same district would simply require a district director to determine that the purchaser is a participant. On the other hand, the purchase of by an individual who claims to be a Native American may require determinations of the individual's status as a Native American that can be efficiently performed at the district office level.

F. Management Restrictions—§ 8(a)(8)

The Administrator currently imposes restrictions on the ability of 8(a) participants to remove capital from its business. No other federal contracting program has a similar restriction. While the Committee understands that it is important for 8(a) participants to maintain capital investment (if for no other reason than to be determined financially responsible as a contractor), the Committee believes that decisions on business operations should be made by business owners. The Committee expects that the technical and training assistance provided pursuant to § 8(b) of the Act will dissuade successful program participants from undercapitalizing their businesses.

G. Expansion into Other Industries—§ 8(a)(9)

Undue restrictions on the logical progression of a program participant may reduce the likelihood of success. For example, a participant that is involved in software development might wish to bid on a project involving network integration that is in a different NAICS code than software development. The Committee's approach enables the program participant to bid on the network integration project and the Administrator should promote that type of expansion. In contradistinction, a participant that is involved in manufacturing steel gears for tanks should not be able to bid on a computer network integration project because it does not represent a logical progression for growth in the business.

H. Opportunity for Hearing—8(a)(10)

Decisions by the Administration employees and the Administrator may be appealed. The appeals are to be handled according to the Administrative Procedure Act. Those requirements include having an administrative law judge preside at a formal hearing. The Committee requires that any decision be based on the record and that the decision be supported by substantial evidence.

The Committee made the change from the existing standard of arbitrary and capricious standard because that standard is inconsistent with the evidentiary standard mandated for formal hearings in the Administrative Procedure Act. A court is not permitted

to overturn a decision resulting from an adjudication (formal hearing pursuant to §§ 554, 556, and 557 of the Administrative Procedure Act) if the decision is supported by substantial evidence. 5 U.S.C. 706(2)(E).

If the Committee provided no standard whatsoever, courts would review any decision made under this paragraph pursuant to the substantial evidence standard. *Citizens to Preserve Overton Park* v. *Volpe,* 401 U.S. 402, 414 (1971). By specifying the standard, the Committee is simply stating the obvious—adjudicatory decisions must be decided on the record made at the hearing and be based on substantial evidence. The Committee does not believe that this represents a change in standard nor imposes additional proof on either the program participant or the Administrator. Since then Judge Scalia's decision in *Association of Data Processing Organizations* v. *Board of Governors of the Federal Reserve,* 745 F.2d 677, 685–86 (D.C. Cir. 1984), the courts have noted that there is no substantive difference between the arbitrary and capricious standard and the substantial evidence standard.[95]

Under the substantial evidence test, a court must determine: whether the agency adequately set forth reasons for its action; whether those reasons reflect consideration of relevant factors; whether available alternatives (to the extent relevant) were at least considered; and whether more than a mere scintilla of evidence supports the determination.[96] The substantial evidence standard outlined in *Brennan* then mirrors the arbitrary and capricious standard set forth by the Court in *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29 (1983). Under the arbitrary and capricious standard, an agency decision will be invalid if the agency: relied on factors outside of its statutory authority; ignored completely an important aspect of the problem; proffered a rationale for its decision counter to the evidence before the agency; or there was no rational connection between the decision and the facts before the agency. Id. at 43. Thus, there is no discernible (and certainly no legal) distinction between the two standards. As a result, the Committee deemed it appropriate to utilize the correct standard for a formal hearing under the Administrative Procedure Act—the "substantial evidence test."

I. Outreach Efforts—§ 8(a)(11)

The 8(a) program is not solely a federal procurement program. As noted elsewhere in this Committee report, the program also was established to assist socially and economically disadvantaged business owners to develop their overall business, including expanding commercial contracts. The rationale behind the program was to revitalize low-income communities from within through business ownership. Despite this broader mission, the program now operates mainly as a federal procurement assistance program. This detracts from the broader mission of the program. The bill requires Administration employees to seek out and recruit potential businesses that might benefit from the procurement and capital ownership de-

[95] E.g., *Olenhouse* v. *Commodity Credit Corp.,* 42 F.3d 1560, 1575 (10th Cir. 1995); *Margalli-Olvera* v. *INS, 43 F.3D 345,357 (8th Cir. 1994); James City County* v. *EPA,* 12 F. 3d 1330, 1338 (4th Cir. 1993).

[96] *Synthetic Organic Chemical Manufacturers Ass'n* v. *Brennan,* 503 F.2d 1155, 1160 (3d Cir. 1974).

velopment program. The Committee believes that aggressive recruitment will lead to greater development in low-income and high unemployment areas.

J. Capability Statement—§ 8(a)(13)

Each 8(a) participant must file a statement of capabilities to the Administrator. Without such capability statement, the Administrator has no way of determining which 8(a) participants are capable of providing goods and services that the Administrator contracts to provide for other federal agencies.

The Administrator is required to separate the statements by those 8(a) participants that will rely on local contracts (such as construction services) and those 8(a) participants that can provide goods or services on a national basis. Participants seeking local contracts shall have their capability statements also submitted to federal agencies in the area served by the 8(a) participant. Participants seeking national contracts will have their capability statements submitted to each federal agency's Director of the Office of Small and Disadvantaged Business Utilization (OSDBU). The OSDBU shall then disseminate the capability statements to procuring activities within the agency.[97] Once the capability statements have been received, buying activities within the agencies shall provide the business opportunity specialist located in the appropriate district office with an estimate of the number, type, and dollar value estimate of contracts corresponding to the capabilities of 8(a) participants.

The dissemination of capability statement is critical to the success of the federal procurement aspect of the 8(a) program. The wide availability of capability statements ensures that Administration employees and contracting officers can identify goods and services that can be delivered by the Administration through subcontracts with 8(a) participants.

L. Initiation of Termination Proceeding—§ 8(a)(21(E)

The District Director may initiate an action to terminate an 8(a) participant by making a recommendation to the Assistant Administrator. Given the greater involvement in the program by the district offices, the Committee believes that it is appropriate to authorize the district directors to commence a termination proceeding. The Committee does not intend that the authority solely be limited to the district directors but the Assistant Administrator also can initiate such proceeding.

Upon initiation of a termination proceeding, the 8(a) participant is prohibited from receiving any assistance until the Administrator has issued a final decision.[98] Given the adverse consequences to the participant and the need for the Administrator to have a rational basis for terminating the participant, the Committee does not expect such proceedings to be commenced on a whim. District directors and the Assistant Administrator should have solid evi-

[97] For example, the OSDBU in the Department of Agriculture should transmit the capability statements to the Rural Utilities Service and the Commodity Credit Corporation.

[98] Any stay of the Administrator's decision and the prohibition on eligibility for assistance under § 8(a) will be left to a federal court equitable jurisdiction. The Committee would expect any plea to a court seeking assistance while the case is being litigated will have to meet the standards set forth in *Washington Metropolitan Area Transit Comm'n* v. *Holiday Tours, Inc.,* 559 F.2d 841 (D.C. Cir. 1977).

dence supporting the request for termination. Reinstatement of the participant will extend the graduation date (the program is 9 years) by the amount of time during which the participant was denied assistance. Thus, if a participant was denied assistance for three months, an additional three months will be awarded to the participant. The Committee's bill ensures that the 8(a) participants get a full 9 years in the program.

M. Transitional Stage Assistance—§ 8(a)(26)

In the transitional stage of the program, 8(a) participants shall be eligible for a variety of assistance designed to ensure that the graduating entity can survive in the commercial arena without the benefit of sole source or restricted federal contracts. In fact, the program mandates that participants develop business plans to attract commercial rather than federal contracts. The Committee modified the types of assistance available to ensure that 8(a) participants have access to joint ventures, leader-follow arrangements, and teaming agreements with other 8(a) participants or other small businesses during the length of the program. In the view of the Committee, these arrangements will further develop the capabilities of 8(a) participants.

Transitional assistance is not limited to various ventures with other small businesses. The Committee requires the Administrator to assist 8(a) participants with obtaining appropriate financing, technology, surplus government property, and managerial training. In conjunction with various joint venture arrangements, this assistance will help the 8(a) participant prepare for life after graduation.

N. Contracts for Assistance—§ 8(b)

The assistance that the Administrator is required to provide 8(a) participants is currently delineated in 7(j)(1)-(10). The Committee transferred the managerial assistance authority to revised subsection 8(b) and condensed the requirements.

The Committee's bill requires the Administrator to enter into contracts with entities capable of providing managerial and technical assistance to 8(a) contractors, small business concerns that are eligible to receive loans pursuant to 7(i) of the SBA,[99] and other socially and economically disadvantaged businesses. Use of grants or cooperative agreements are also encouraged and the Administrator should not rely solely on contracts.

Changes were made because the Committee determined that existing and prior efforts to provide technical and managerial assistance were woefully inadequate. Given the fact that the 8(a) program is a capital ownership development program, technical and managerial assistance will help ensure that the 8(a) participant can build a successful business. The Committee also believes that other socially and economically disadvantaged firms can benefit from technical and managerial assistance needed to build a successful business.[100]

[99] Section 7(i) authorizes loans to small business concerns in low-income and rural areas.

[100] The Committee eliminated HUBZone firms from gaining access to this service (except to the extent that they are eligible and have applied for a loan pursuant to § 7(i) of the SBA). The HUBZone program is not designed to provide ownership development to its participants. Rather, it is intended to provide jobs in low-income areas. Given its emphasis on job creation rather

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Contracts for assistance should be awarded to those entities best capable of providing such assistance without regard to size. The Administrator is not forbidden from using size (favoring the small business) as a source selection criterion but only after first determining that the small business is as capable of providing the assistance as all other responders.

O. Commercial Marketing Representatives—§ 8(d)(10)

Section 208(b) amends § 8(d) of the SBA. The only change was to modify the requirements for CMRs. Given the Committee's emphasis on improving the economic situation of small manufacturers, CMRs will play a vital role in ensuring maximum use of small manufacturers and other small businesses as subcontractors to federal prime contractors.

CMRs are required to: review federal agency solicitations; evaluate subcontracting plans; identify large businesses that can utilize small businesses including small manufacturers in their supply chain management requirements; and counsel small businesses on their status as subcontractors. The Committee intends that such counseling include efforts to assist small businesses in obtaining payment from prime contractors.

Federal prime contractors that are not small businesses are required to submit subcontracting plans for each federal contract. The plans delineate how they will use small businesses as subcontractors. Section 8(d) of the SBA authorizes the federal government to obtain liquidated damages when a federal prime contractor fails to comply, in good faith, with the subcontracting plan. No federal prime contractor has ever been assessed liquidated damages for failure to comply with a subcontracting plan.

The Committee makes two changes to improve the enforcement of subcontracting plans. First, the bill requires the Administrator to promulgate standards (via rulemaking pursuant to the notice and comment requirements of the Administrative Procedure Act) for determining when a prime contractor is in good faith compliance with a subcontracting plan. Second, the CMR is authorized to recommend to the contracting officer when liquidated damages may be appropriate for failure to comply with the subcontracting plan.

P. Women's Procurement Program—§ 8(m)

Section 208(c) modifies 8(m) of the SBA that establishes the procurement program for women-owned businesses. Congress created the program to enhance procurement by federal agencies of goods and services provided by women business owners. A federal contracting officer may restrict competition to economically disadvantaged women-owned businesses. If the Administrator finds that a woman business owner is operating in an industry historically underrepresented by women, the Administrator may waive the economic disadvantage criterion. Until the Administrator makes such identification, federal contracting officers must limit competition to economically disadvantaged women-owned businesses.

The Committee is extremely frustrated with the pace of the Administrator's study on industries in which women-owned busi-

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than business development, the Committee determined that scarce resources should be devoted to building businesses.

nesses are historically underrepresented. As a result, the Committee authorizes federal contracting officers to make the determination on underrepresentation. To avoid situations in which two contracting officers may treat similarly situated women-owned businesses differently, the Committee expects each federal agency to develop an internal mechanism to ensure that all federal contracting officers treat women businesses owners in the same industry in the same manner, i.e., either as underrepresented or require them to be economically disadvantaged.

The Office of Hearing and Appeals (OHA) hears challenges to a determination that a business is small. The Committee amended § 8(m) mandating that challenges to eligibility in the women's procurement program use the OHA procedures. If the OHA procedures are sufficient to determine small business eligibility, then, in the view of the Committee, they are adequate to resolve any conflicts concerning eligibility for the § 8(m) program. No additional procedures are needed to hear any challenge under § 8(m).

Section 209. Training and Assistance

Section 209 of the bill creates a new § 12 from the reserved section arising out of the Committee's reorganization of the SBA. The section provides the authority for certain technical and training assistance programs under the SBA, including the authority, should the Administrator so desire, to create small business institutes. The Committee does not expect the Administrator, in these tight budgetary times to create small business institutes, but the Committee did not believe that the authority should be eliminated.

A. Assistance—§ 12(a)

This subsection grants the Administrator general authority to provide technical and training assistance to all categories of small business concerns defined in § 3 of the SBA. Although the authority could be inferred from other provisions of the SBA, the Committee believes that it is appropriate to grant the Administrator clear statutory authority to provide technical and managerial assistance to small business concerns. The Committee does not intend that the Administrator need create any new training and technical assistance programs as a result of this clear authorization.

B. Volunteers—§ 12(b)

In the current version of the SBA, the volunteer program is set forth in § 8(b). As already noted, the Committee believes that § 8 should be devoted solely to federal procurement assistance programs. The Committee therefore transferred the provisions relating to the volunteer programs, the Service Corps of Retired Executives and the Active Corps of Executives, to this new § 12.

The Committee made only one substantive change in these volunteer programs. All other provisions relating to the operation of the volunteer programs were simply transferred from § 8(b) to new subsection 12(b).

Two new groups of volunteers, the Service Corps of Retired Manufacturing Executives (SCORME) and the Active Corps of Manufacturing Executives (ACME) are created. The Committee recognizes that both existing volunteer groups have many executives from manufacturing firms. The Committee does not intend that new ex-

ecutives necessarily need to be recruited; SCORME and ACME can be created from the existing volunteers. The Administrator, however, is required to "recruit" either from the existing volunteers or new volunteers executives willing to provide assistance either solely or primarily to small manufacturers. These volunteers will be considered the members of SCORME and ACME. The Committee believes that proper identification of these executives will assist Administration employees and grantees (such as operators of small business development centers) to refer small manufacturers to those executives most capable of providing adequate technical and managerial assistance.

C. Business Grants and Cooperative Agreement—§ 12(d)

This subsection reauthorizes the BusinessLINC program. The Committee believes that the BusinessLINC can play a valuable role in assisting small manufacturers expand. The bill does not alter the basic premise of the BusinessLINC program. The Administrator is authorized to make grants and enter cooperative agreements with any entity or group of entities (public or private) that will increase the business-to-business relationship between large and small entities.

The Committee clarifies that the BusinessLINC is not simply another mechanism to create mentor-protege programs. Although that is certainly one aspect of the program, it is not the sole raison d'etre. Instead, the Committee believes that BusinessLINC programs can be used to identify opportunities in which small businesses can supply other businesses with goods or services. The Committee identifies this as increasing opportunities for supply chain management (which is defined in this subsection as the network of facilities used to procure goods) and identifying opportunities for small business concerns in low-income or high unemployment areas. The Committee also requires, to the extent possible, grantees or cooperative agreement signatories to maintain a database of supply chain management opportunities. The Committee suggests that the Administrator and potential grantees examine the database maintained by the City of Tucson's BusinessLINC program.

The Committee increases the authorization of funding for BusinessLINC in the expectation that the other grantees will run a program as comprehensive and successful as that operated by the City of Tucson. The Committee does not alter the requirement that grantees or cooperative agreement signatories must obtain matching funds, either in cash or in-kind contributions, equal to the amount of the grant. The Committee would not expect the matching funds to come from other federal grant programs.

Section 210. Contracting Assistance

Section 15 of the SBA provides the Administrator with the authority to ensure that small businesses receive their fair share of federal prime contract dollars. Section 210 amends § 15 to implement the Committee's efforts to enhance the ability of all small businesses, especially small manufacturers, to obtain federal government contracts.

A. Dispute Resolution by the Office of Management and Budget—§ 15(a)

PCRs are the primary weapon against contract bundling. They review proposed federal contracts and determine whether the procurement strategy will make small business prime contract participation unlikely. Under current law, if the Administrator (based on the advice of the PCR) determines that a bundled contract should be unbundled, the Administrator may appeal the procurement strategy to the head of the procuring agency. The Committee's believe the appeal process is fundamentally futile because the head of the agency is reviewing his or her own procurement strategy.

A Presidential Executive Order authorizes the Administrator to appeal the procuring agency's determination to the Office of Management and Budget. The Committee believes that this additional step is important by providing an independent assessment of the procurement strategy. The bill simply codifies the existing Executive Order.

B. Programs for the Blind and Handicapped—§ 15(c)

Under the Javits-Wagner-O'Day Act (JWOD), people who are blind or severely disabled obtain a source selection preference ahead of all other sources except Federal Prison Industries. A committee places products on a list that JWOD contractors can provide. If Federal Prison Industries cannot provide the product, the contracting officer is required to procure the product from a JWOD contractor.

The Committee is aware that more and more products are being placed on the list of mandatory selection from JWOD contractors. While the Committee believes it is absolutely vital to secure the financial health of America's blind and severely disabled, the Committee believes the impact of the program on small businesses should at least be examined. The Committee therefore is reviving a provision that applied to the JWOD program in 1995.

Under the Committee's bill, the Administrator is required to monitor and evaluate the impact of the product listing on small businesses (other than not-for-profit enterprises that are participants as JWOD contractors). In addition, the bill authorizes small businesses that contend they are being harmed by the JWOD program to appeal to the Administrator. The Administrator is authorized to require the procuring agency to take necessary action to mitigate economic injury on small businesses. In doing so, the Committee would expect the Administrator and procuring agency to find a common ground that supports both small businesses and the not-for-profit organizations involved in the JWOD program.

C. Minimum Solicitation Period—§ 15(e)

The Committee has a long history opposing bundled federal procurement contracts. Rarely will a single small business concern be able to meet the source selection criteria for a bundled contract. Even procurement strategies that consolidate existing contract requirements that are performed by small businesses may not receive a responsive bid from a small business. The Committee recognizes that the best means for small businesses to bid on bundled federal contracts is to form a teaming arrangement as defined in the SBA as amended by this bill. Selecting a team, identifying the role of

team members, formalizing the team structure, and submitting a proposal takes time. To encourage the use of teams, the Committee determined that small businesses, including teams as defined in this bill, must be allowed 60 days from the date of solicitation to bid on bundled contracts.[101] The Committee believes that 60 days is sufficient time for small businesses to develop teams because the execution of a bundled procurement strategy typically has a long genesis that incorporates open days with industry and issuance of draft solicitations prior to the publication of a solicitation. The Committee expects that small businesses will use the time during which the agency is preparing the bundled contract to develop their teaming strategy.

D. Procurement Goals—§ 15(g)

Currently small business goals (for both prime and subcontract awards)[102] are negotiated between the Administrator[103] and federal agencies on a biannual basis. The Committee's bill modifies this practice by requiring that the goals be negotiated on an annual basis and these negotiations be concluded prior to the commencement of the next fiscal year. Thus, the Administrator will have to commence negotiations some months prior to September 30 of each year.

In addition to a government-wide goal, each federal agency is required to establish its own procurement goal. This goal is different because it relies on each agency to determine the maximum practicable opportunity for small business and small manufacturer participation in the agency's procurements. For example, the Committee would expect that the Administrator would develop a goal significantly greater than 23% for small business utilization. If the Administrator is unwilling to surpass the small business utilization, it is highly unlikely that other agencies would be willing to do the same.

As part of its effort to revitalize the manufacturing sector, the Committee requires each federal agency to develop an appropriate goal for procurement from small manufacturers. Although the Committee considered establishing a government-wide goal for small manufacturers, it rejected that concept. Typically, the government-wide goals are treated as ceilings rather than floors and the Committee did not wish to limit agencies in developing a small manufacturer goal. Furthermore, the Committee did not have sufficient information to calculate an appropriate government-wide goal. The Committee will closely watch agency implementation of the individual agency goals and consider adopting a government-wide goal in the next reauthorization cycle.

The Committee also requires a separate goal be established for 8(a) participants. The Committee took this action because the goals for 8(a) participants were being incorporated into the overall goals for socially and economically disadvantaged individuals. While 8(a)

[101] To the extent that an emergency situation exists, it is more than likely that the procuring agency will use the emergency as justification for a sole source award. The Committee does not expect, except in rare instances, for federal agencies to use bundled contracts to meet emergency needs or situations.

[102] The Committee made no change in the new government-wide goals.

[103] The SBA actually authorizes the President to negotiate the goals. The Committee believes that it is appropriate to delegate this responsibility to the chief proponent of small business within the Executive Branch—the Administrator.

participants represent a subset of socially and economically disadvantaged individuals, the Committee believes that a separate goal is necessary to ensure a greater likelihood of success for 8(a) firms.

Finally, the Committee requires that the Administrator, working in conjunction with the Administrator of the Office of Federal Procurement Policy, shall ensure that the goals are met or exceeded. The Committee made this change to impress upon federal agencies that the statutory goals should be floors not ceilings for procurement from small businesses and small manufacturers.

E. Procurement Reports—§ 15(h)

At the end of the fiscal year (and as soon as data becomes available from the Federal Procurement Data System or FPDS), each agency shall report to the Administrator on its success in achieving each individual agency goal. The reporting of goals shall include: small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small business concerns, and firms participating in the 8(a) program. As with the development of goals, the Committee separated the reporting of 8(a) firms from other socially and economically disadvantaged small businesses. This prevents conflation between the two goals and generates more accurate data for oversight of the 8(a) program.

F. Restricted Competition—§ 15(j)

Current law requires that small businesses are the primary source for the completion of contracts valued between $2,500 and $100,000. This figure represents only a small fraction of the contracts for which small businesses are capable of performing contracts of value significantly larger than $100,000. Furthermore, the limitation was enacted in 1996 and has not been changed to even take account of inflation. Therefore, the Committee determined that it is appropriate to increase the dollar value of the contracts for which small businesses are the primary source to $1,000,000.

G. Assignment of Procurement Center Representatives—§ 15(l)

As already noted, PCRs represent the critical component in the Administration's efforts to obtain more federal procurement contracts for small businesses and small manufacturers. PCRs review contract strategies of federal agencies to determine which requirements can be served by small businesses. PCRs also review proposed bundled contracts to ascertain whether the contracts can be broken into smaller parts that small businesses might be within the technical range of responsive bids. Small businesses also obtain counseling from PCRs on contracting with the federal government and identifying agency buyers of products and services. PCRs, often located at federal procuring agency buying activities, attend various industry and strategy meetings on the development of solicitations. PCRs work closely with the Directors of the Offices of Small and Disadvantaged Business Utilization in order to increase the federal contracts awarded to small businesses. PCRs also are required to appeal to the Administrator the decision of an agency re-

garding any item for which the PCR has made a recommendation on the procurement strategy and which was rejected by the procuring agency. To the extent necessary and given an appropriate security classification, PCRs will have access to sensitive documents of the procuring agency. Small businesses may seek PCR advice on technical data rights and the impact of various contract clauses on small businesses. Fundamentally, the PCR is to focus on ensuring that small businesses receive the maximum practicable opportunity to participate in federal procurements as prime contractors.

Small business technical advisers assist PCRs. At least two are assigned to each major procurement center to which a PCR is assigned. The Committee grants the Administrator the discretion to select which procurement centers require technical advisers. Nor does the Committee intend that each PCR will necessarily be assigned two technical advisers. At least one technical adviser should be an engineer in order to assist the PCR with understanding the technical requirements of complex federal procurement contracts and assist the PCR in determining whether a small business is technically competent to perform the contract.

The Committee also eliminated the concept of a separate breakout PCR. The Committee believes that the bill will not provide sufficient number of PCRs to perform the functions set forth in § 15(1), much less have separate breakout PCRs. As a result, the Committee combined the functions of the breakout PCR with the PCRs. The Committee is convinced that capable PCRs, with technical advisers, should be able to perform the functions now carried out by socalled breakout PCRs.

H. Federal Procurement Data System—§ I5(r)

Federal agencies are required to report data on contracts in excess of $25,000 to the FPDS. Pursuant to § 7102 of the Federal Acquisition Streamlining Act (FASA), socially and economically disadvantaged businesses receive a price evaluation adjustment of 10 percent. The FPDS system is capable of reporting data reflecting contract awards made as a result of the price evaluation adjustment. The Committee bill requires the Administrator to work with the Administrator of the General Services Administration (the agency charged with maintaining the FPDS) to develop a data element that will capture contract awards made pursuant to the price evaluation preference in § 7102 of FASA. Without this information, it is impossible for federal agencies and Congress to evaluate the success of the price evaluation adjustment or determine how readily agencies are meeting their goals for procurement from socially and economically disadvantaged individuals.

I. Priority of Small Business Procurement Preferences—§ 15(s)

Federal procurement law establishes an order of preference by which federal contracting officers are required to obtain goods and services. Those preferences are currently set forth in the Administration's regulations at 13 C.F.R. §§ 126.605–.607 and the Part 19 of the Federal Acquisition Regulations.

For contracts of less than $5 million for manufacturing or $3 million for all other types of contracts, the contracting officer shall

first determine whether an 8(a) firm can provide the goods or services at a fair and reasonable price. If two or more 8(a) firms are capable of providing the good or service at a fair and reasonable price, the contracting officer may award the contract using restricted competition limited to 8(a) firms. Failing to find 8(a) firms, the contracting officer then repeats the process for HUBZone firms, identifying whether a single HUBZone can perform the contract at a reasonable and fair price. If two or more such firms can perform the contract, award may be made through competition restricted to those firms. The process repeats itself for women-owned businesses. Finally, a contracting officer who does not identify any sources from 8(a), HUBZone, or women-owned businesses may limit competition to all small businesses. The determination of qualified sources is left to the discretion of the contracting officers and that discretion, absent proof of possible fraud or bad faith, will be left undisturbed.[104]

The source preference list set forth in amended § 15(s) of the SBA will not apply if the contracting officer can satisfy the contract from UNICOR (Federal Prison Industries) or JWOD contractors.

The Committee's bill simply codifies existing regulatory law concerning source selection preferences by contracting officers. Absent codification, the Administrator and the Federal Acquisition Regulatory Council are at liberty to modify those preferences. The Committee believes that policy decision should be left to Congress.[105]

J. Procurement Program for Very Small Business Concerns—§ 15(t)

The "Very Small Business Program" allows contracting officers to restrict competition for contracts of less than $50,000 but more than the micro-purchase threshold of $2,500 to very small businesses. The bill defines a very small business as one that has less than 15 employees and revenue of less than $2 million for manufacturing businesses (NAICS sectors 31, 32, and 33) and less than $500,000 for all other businesses.

The Committee, which believes that the program has been extremely successful, determined that it was appropriate to make the program permanent. The program will allow very small business better access to federal contracts. Changes were made in the size standards to more accurately reflect the size of a very small business.

In carrying out the program, the Administrator shall establish a preauthorization program for very small businesses under 7(a) of the SBA. This will assist very small businesses in obtaining financing based on the contract award. Agencies may rely on self-certification that a responder to a solicitation is a very small business. The Committee expects that the Administrator and the Secretary of Defense (or his delegatee) shall modify the Central Contractor Registry (the old Pro-Net database) to identify very small businesses and develop a data element for use in the database. Regulations for implementing the permanent program must be promul-

[104] E.g., *National Council of Fishing Vessel Safety and Ins.,* B–239303, 90–2 CPD ¶ 127, at 4 (1990); *Colt Indus., Inc.,* B–231213.2, 89–1 CPD ¶ 49, at 3 (1989).

[105] See T. LOWI, THE END OF LIBERALISM: IDEOLOGY, POLICY, AND THE CRISIS AND PUBLIC AUTHORITY *in passim* (1969) (arguing that Congress not federal agencies should make policy decisions).

gated and published within 270 days after the date of enactment allowing for a 60-day comment period.

Section 211. Authorization of Appropriations

This section amends § 20 of the Small Business Act and provides for authorization of appropriations. The Committee selected authorization levels with sufficient room to allow for expected growth and expansion of programs authorized by the SBA and SBIA. The Committee raised these authorizations, especially for SBIA programs, because of the increased likelihood that CDCs and SBICs would provide more financings to small manufacturers.

The Committee only made authorizations for two years. Given the significant changes made in the SBA and SBIA by the bill, the Committee believes that reexamination of these modifications and any corrections should be undertaken sooner rather than later. Therefore, the Committee provides only two-year authorizations throughout the entire bill forcing the Committee and the Administrator to closely monitor implementation and identify problems during the next reauthorization cycle.

Section 212. Small Business Development Centers

This section completely rewrites § 21 of the SBA. The Committee rewrote the section so that the statutory language actually comports with the current operation of the Small Business Development Center Program.

The basic approach taken by the Committee is that the Administrator selects grantees that operate a network of small business development centers (SBDCs). The Administrator negotiates a grant or cooperative agreement with the grantee. That agreement specifies how the grantee will provide the services to be delivered at SBDCs. Once the grant agreement is signed, the operation is left to the discretion of the grantee. However, the Administrator has the authority to revoke the grant if the grantee is not providing services or is not otherwise in compliance with the grant agreement. Grantees have the option of operating the SBDCs themselves or subcontracting their operation to another entity or some combination thereof. This does not change current law or practice within the program. The grantees then are responsible for ensuring that the SBDCs provide the statutorily required services. The bill authorizes the grantees to offer the services either by themselves, through subcontractors or some combination thereof. Grantees also are responsible for proper operation of the SBDCs, including accounting for federal funds, and the grantees are required to obtain matching funds as mandated by the statutory funding formula. The Committee makes explicit, § 21(q), the requirement that the regulations implementing the SBDC program must identify (by cross-reference) and mandate compliance with federal grant requirements.

The Committee made no changes to the matching fund requirement or the funding formula but increased the level of appropriations because of the importance that the Committee places on SBDCs to deliver services and advice to the small business community as well as additional responsibilities concerning assistance to small manufacturers. The Committee also limits the amount of authorized funds that can be used for the payment of Administration expenses related to oversight. The Committee also bars the Admin-

istrator from using any funds authorized pursuant to § 21 to reimburse the Administrator for expenses related to oversight of the SBDC accreditation program.

Subsection 212(c) provides that the requirements of the revised § 21 only apply to grants made, renewed or terminated after the date of enactment of this Act. Thus, any grant agreement that is still in effect on the date of enactment will continue to be in effect until the Administrator takes action to make a new grant, renew an existing grant, or terminate a grant.

The Committee adopted this approach for two reasons. First, the revised statutory language now comports with the general structure of grant programs operated by other federal agencies.[106] Second, the Committee believes that the amended statutory language will benefit the operation of the program by clarifying the powers and authorities of the Administrator and grantees.

A. Establishment of Program—§ 21 (a)

This subsection authorizes the Administrator to operate a SBDC program by making grants to grantees selected in accordance with other requirements of the revised § 21.

B. Selection of Grantees—§ 21 (b)

This subsection requires potential grantees to submit applications to the Administrator. The application must contain a plan for establishing a network of SBDCs and set forth that the grantee will provide a separate budget for the operation of the SBDCs.[107] Successful applicants will have to demonstrate that they are primarily relying on institutions of higher education or women's business centers as the site for their SBDCs. The Committee clearly prefers that the grantees rely on institutions of higher education rather than women's business centers as the sites of their SBDCs. The Committee recognizes that there may be locations in a particular state in which the SBDCs cannot locate at institutions of higher education or even women's business centers. Thus, the Committee requires that the SBDCs be located primarily rather than exclusively at institutions of higher education or women's business centers. Nothing in the Committee's preference for situating SBDCs at institutions of higher education requires the grantee to terminate contracts with subcontractors who provide SBDCs at sites other than institutions of higher education.

The Administrator is then entitled to approve, conditionally approve, or reject a plan submitted under this section. Nothing in the Committee's rewrite of § 21 prohibits the Administrator from establishing standards for selecting among competing (and mutually exclusive)[108] grant applicants. The Committee would expect that any

[106] Other federal grant programs select grantees for awards. In contradistinction, § 21 requires the Administrator to award grants to applicants. Of course, that makes no logical sense. Section 21 then frequently conflates the grantee with the services that the grantee provides; again this is a concept, within the world of federal grants, unique to the SBDC program.

[107] Typically, grantees are boards of trustees of institutions of higher education. These entities have their own budgets but may not necessarily allocate a separate budget to operate SBDCs. The Committee's bill requires that any successful applicant must have a separate budget limited solely to the operation of the SBDC network.

[108] Mutually exclusive refers to two or more applicants competing to serve the same state or the same portion of a state if there is not a grant applicant seeking to serve an entire state. Under this definition and the Committee's preference for a single grantee, an applicant interested in serving the entire state and one serving a portion of a state are not considered mutually

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standards developed by the Administrator would be codified in the Code of Federal Regulations and disseminated, whether codified or not, to the association authorized by this section.

The Committee believes that the selection of grantees is sufficiently important that the Administrator may only delegate this responsibility to the Deputy Administrator. This prohibition on delegation simply means that only the Administrator or Deputy Administrator is authorized to sign the document approving or rejecting the application. As already noted elsewhere in this Committee report, the Committee fully expects the Administrator to rely on subordinate personnel to review applications and make recommendations. Nevertheless, the final authority may only rest with the Administrator. The Committee does not expect that the Administrator will have to select new grantees (except for certain special situations delineated elsewhere in the amended § 21) because the grant agreements already in place will continue unless the grantee abandons the grant agreement or the Administrator terminates the grant for cause. In that case the Administrator is required to select grantees only from eligible applicants as specified in the bill. The Committee recognizes and grandfathers existing grantees that may not be institutions of higher of education.[109]

The Committee's bill expresses a strong preference for selecting only one grantee. Multiple grantees within one state constitute a significant waste of scarce resources. The Committee recognizes that there may not be an applicant willing to serve an entire state. In such cases, the Administrator is permitted to select a maximum of two grantees per state. Thus, the Administrator is authorized to select two grantees but must seek out a single grantee on the second anniversary of selecting the two grantees. This Committee grandfathers the multiple grantees in Texas because of the uniqueness of funding for higher education within that state.[110] Furthermore, the Committee recognizes and permits a grantee to serve small business concerns in an adjacent state to the extent that a SBDC in the adjacent state is closer than a SBDC in the small business concern's home state. Finally, the Administrator, to the extent that a territory or insular area does not have a grantee, the Administrator is at liberty to select another state's grantee to serve that territory. Of course, the Committee would expect that the Administrator would select a grantee from a state that is as close to

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exclusive applicants. The Committee's bill would prohibit the Administrator from considering the applicant only interested in serving part of a state unless the Administrator rejects the applicant interested in serving the entire state. The Administrator then may review the applicants desiring to serve only part of the state. If only one such application exists, then it cannot be considered mutually exclusive. Nor would there be mutually exclusive applications if the applicants did not apply to serve the same part of the state. Mutually exclusive applicants need not apply to cover the exact same area within a state. For example, if an applicant applies to cover western North Carolina and that application includes providing service to Burlington, NC while another applicant offers to serve eastern North Carolina (including Burlington), then the mutually exclusive application exists only to serve the overlap area—Burlington, NC and the Administrator's selection criteria for mutually exclusive applicants should determine which of the two applicants may serve Burlington, NC.

[109] In some states, state agencies (other than institutions of higher education) are grantees. These state agencies then subcontract the operation of the SBDC network to institutions of higher education.

[110] In addition, the Administrator spent approximately six years attempting to identify one grantee interested in serving the entire state and could not. The Committee has not received any complaints about operations in the state of Texas. On the other hand, the Committee is highly troubled that the Administrator made no effort to identify a single grantee for the state of California even though the Committee is aware that institutions of higher education were willing to serve the entire state as a single grantee.

the territory as possible. Thus, the Committee would not expect that a grantee located in Oregon would be selected to serve as the grantee in the Virgin Islands just as the Committee would not expect a grantee in Rhode Island to serve as the grantee for American Samoa.

What the Committee does not condone or grandfather is the current number of grantees within the state of California. The actions of Administration employees within the district offices in California are inexplicable in requiring that a state suffering severe economic hardship should have six separate SBDC grantees. That constitutes an abhorrent waste of resources that can be better devoted to delivering of services through SBDCs. Therefore, the Committee fully expects that the Administrator, on enactment, apply this provision to select one and no more than two grantees for the state of California as mandated by subsection 212(d) of the bill.

C. Grant Provisions—§ 21(c)

The bill requires that the grantee and Administrator jointly negotiate and agree on the terms of the grant agreement. The Committee expects both sides to negotiate in good faith to find a mutually satisfactory grant agreement that ensures an adequate level of service will be offered to small business concerns within the state. The terms of the grant agreement must include: the authority for the grantee to serve areas within the state through subcontracts; require the grantee to place SBDCs as close as possible to small business concerns (which may involve subcontracting operation of satellite centers that do not provide a full level of SBDC services but can provide access to some of the services and Internet or other telecommunications links to the nearest SBDC); mandate that the grantee provide resources, including staff and equipment, to maximize accessibility to small business concerns; assurances that the grantees are utilizing, to the fullest extent possible, other federal agency resources; and permit the grantee to enter into contracts with the federal government. Grant agreements may not require the grantee or its subcontractors to meet any type of quota for delivering small business concerns seeking funding under the SBA or SBIA. The Committee is highly troubled that district office employees are imposing requirements that transform grantees into marketing adjuncts of the Administration. The Committee, as a result, also prohibits the Administrator from delegating the negotiation of cooperative agreements or grants or contracts (the terms are used interchangeably within the revised 21) to any employee located in a regional or district office of the Administration.

D. Term, Renewal, and Termination—§ 21(d)

Grants are automatically renewable on a fiscal or calendar year basis as determined by the Administrator. The Committee expects the Administrator to continue existing practices related to grants (which may mean that some grants are calendar year and others are based on a fiscal year). The Administrator and grantee are authorized to negotiate mutually satisfactory modifications recognizing that the primary goal is to maximize service to small business concerns.

Automatic renewal does not occur if the grantee abandons the grant, i.e., notifies the Administrator that it is no longer interested

in serving as grantee. The Administrator then must follow the requirements for selecting new grantees. The Administrator also is authorized to terminate a grant under regulations codified in the Code of Federal Regulations. The regulations shall specify the conditions by which the Administrator will determine whether the grantee is in compliance with the grant agreement. Any standards must account for the economic climate in a state served by a grantee as well as concomitant budgetary restrictions arising from that economic climate. The Committee also would expect the Administrator to adopt stricter standards of compliance when the state served by a grantee is experiencing an economic boom and budgetary restrictions are less of a concern.

Termination proceedings shall be conducted according to the formal hearing requirements set forth in sections 554, 556, and 557 of the Administrative Procedure Act. This ensures that the grantee will have the opportunity to present its best case in opposition to the Administrator's termination. The Committee expects that any hearing will be conducted by the Office of Hearings and Appeals and the decision of that Office would be final for purposes of Chapter 7, of Title 5, United States Code.

The Committee only expects the Administrator's regulations to provide a temporary transition period at first renewal after enactment of this bill. Once a renewal has occurred under the new standards, no transition period is necessary because the grantees understand their responsibility to comply with the grant agreement.

E. Management of SBDC Centers by Grantees—§ 21(e)

This section delegates full responsibility to the grantee for management of the network of SBDCs. A grantee is required to have a full-time director and provide staff for individual SBDCs. The grantee must comply with all federal requirements concerning grant management and such requirements shall be made (by incorporated reference) part of the grant agreement. Personnel in district and regional offices will have no authority to approve expenditures of funds by grantees or interfere in the selection of a grantee director. The Administrator is authorized to prohibit the expenditure of federal funds if, after consultation with the General Counsel, determines that the expenditure will violate federal law. The Administrator may determine (and remove) a grantee director if such person is deemed unfit because of a conviction for a felony. Agency employees must report any problems to the principal office of the Administration but only after consultation with the Administration attorneys. Finally, the bill requires that the grantee and its subcontractors, if applicable, shall continuously modify their services and resources to meet the needs of the small business community.

F. Services Provided by the Grantee—§ 21(f)

The Committee makes only a few changes to the services that grantees must be provided. First, the bill frequently cites that services must be made available in order to assist small manufacturers. Second, SBDCs are required to work more closely with the Manufacturing Extension Partnership at the Department of Commerce in an effort to improve the services available to small manufactur-

ers. Third, SBDCs located at institutions of higher education are required to hold two procurement conferences in which the grantees invite small business concerns and small manufacturers to meet with procurement officials of the institutions of higher education in an effort to increase procurement from small business concerns and small manufacturers. Grantees should use as a model the matching program operated by the Administration in conjunction with the United States Chamber of Commerce. Although SBDCs historically serve small businesses, the Committee determined that it was appropriate to authorize small and mid-sized communities that have lost a major employer, such as a factory shutting down to transfer of production overseas, to use the SBDCs for advice on community revitalization. The Committee intends that SBDCs shall provide assistance to the local governments should they request such assistance. The Committee believes that small businesses will benefit from the assistance provided to small and mid-size communities.

G. Special Rules Relating to SBDCs—§ 21(g)

The authority of SBDCs to serve out-of-state businesses has been addressed elsewhere in this report. This subsection also provides the specific requirements for a grantee to enter into a contract with another federal agency to provide assistance to small business concerns. The Administrator shall not authorize a grantee to bid, if in the opinion of the Administrator, performance of the contract will interfere with the grantee's compliance with the terms of the grant.

Grantees are required to have small business concerns with appropriate expertise provide assistance at SBDCs. To the extent that the area served by the SBDC has a concentration of small manufacturers, the Committee expects that one of these small business vendors will have expertise in consulting with small manufacturers.

Although the bill drastically reduces the power that district directors and their subordinate employees can exercise over grantees (by prohibiting them from approving or disapproving any action taken by a grantee), the Committee believes that district offices still have a vital role to play in the operation of the SBDC program. The Committee expects that grantees will regularly consult with district directors and other district employees in order to modify and upgrade the services that the grantee provides to small businesses. The requirements concerning district employee reporting of improper actions by the grantee or its subcontractor has been addressed elsewhere in this Committee report.

Grantees are authorized to charge fees for special events, such as seminars or cosponsored events. Grantees are prohibited from charging fees for counseling sessions provided by or through a SBDC. Funds from grants may be used to collocate employees of state international trade offices at SBDCs or SBDC satellite offices.

The privacy requirements are the same as those imposed in H.R. 205 passed by the House in the 108th Congress and H.R. 203 passed by the House in the 107th Congress. The Committee incorporates by reference that portion of the Committee report for H.R. 203 that addresses the privacy of SBDC clientele.

H. Additional Grants—§ 21(h)

Under certain conditions (related to available funds), grantees are eligible to apply for additional grants (beyond that for which they have received funds pursuant to the funding formula). The additional grants only can be expended to provide assistance to certain limited classes of small business concerns. The Committee made (exclusive of changes needed to conform to the overall rewrite of the section) only one change—adding assistance to small manufacturers as an additional purpose for which a grantee can apply. Thus, a grantee that opened a SBDC small manufacturer advice center would be eligible to apply for this supplemental grant. The Committee believes that the amendment creates additional incentives for SBDC grantees to assist small manufacturers.

I. Formation of Association—§ 21(k)

The only change made to this subsection is the requirement that the grantee's directors form the association. The Committee made this amendment to conform this subsection to the rest of the rewrite of § 21. The change is intended to reflect current practice of the association.

The bill adds two additional requirements to the association's responsibilities. The association is to work with the Administrator in developing regulations governing the operation of SBDCs. Such work may include consultation with the association or its members prior to issuing a notice of proposed rulemaking. The Committee expects the association to comment on any proposed rule changes. Nothing in the Administrative Procedure Act prohibits communication with agency decisionmakers once the comment period closes [111] and the Committee would expect that the association, as well as other interested parties, will continue to contact agency decisionmakers after the comment period closes. The association also is required to work with the Administrator and the Office of Small Business Development Centers to create a uniform grant agreement. The Committee recognizes that such uniformity may not be achievable but believes that efforts to create uniformity will reduce administrative burdens on the agency and the grantees.

J. Accreditation Program—§ 21(l)

The Committee makes two changes to the certification program. First, it renames the certification program as an accreditation program. The change was made because the Committee recognized that institutions are accredited. Since the program determines the quality of SBDCs, it makes sense to have them accredited not certified. Second, the accreditation program will not only accredit the grantees but also individual SBDCs. The Committee does not consider that satellite offices are SBDCs and therefore should not be included within the accreditation program. This is particularly necessary when the grantee subcontracts the operation of one or more SBDCs. Without accrediting the subcontractors, it is impossible to determine whether the subcontractors are adequately performing

[111] *Texas Office of Public Utility Counsel* v. *FCC,* 265 F.3d 313, 327 (5th Cir. 2001), cert. denied sub. nom. *NASUCA* v. *FCC,* 535 U.S. 986 (2002); *Sierra Club* v. *Costle,* 657 F.2d 298, 401–02 (D.C. Cir. 1981).

the services set forth in the contract between the grantee and the subcontractor.

K. Small Business Development Center Advisory Boards—§ 21(m)

The bill clarifies the difference between national advisory board that consults with the Administrator and the local advisory boards which consult with the grantees. With respect to the local advisory board, the subsection prohibits the district director or any employee in a district office from approving or disapproving a member of the local advisory board. The Committee would expect that the grantee consult with the district director and others for potential members of the board. The Committee also would expect that the district director would inform the grantee if the district director did not believe that a particular individual was not appropriate to sit on the board. Nevertheless, the advisory role of district employees is just that—advisory only. Finally, the bill ensures that existing members of advisory boards will continue to serve on those boards after enactment until the board member's term expires.

L. Administration of the Program—§ 21(n)

This subsection specifies that the SBDC program will be administered by the Administrator through the Assistant Administrator for Small Business Development Centers. The subsection delineates the specific responsibilities of the Assistant Administrator. The Administrator, pursuant to his general authority to delegate, may require the Assistant Administrator to perform other tasks related to the operation of the SBDC program but is of course prohibited from delegating responsibilities that the bill assigns solely to the Administrator or Deputy Administrator. To ensure that adequate information is being provided to the Administrator, the Assistant Administrator is required to consult with national and local advisory boards, small businesses, the association, and Administration employees located in district and regional offices.

M. Information Sharing System—§ 21(o)

The Committee adds a requirement that the information sharing system developed by grantees also include, to the extent feasible, increased information on procurement opportunities for small manufacturers with other businesses located in the United States. The Committee believes that grantees have contact with many businesses and those businesses may want to utilize the SBDCs as another option to expand their universe of suppliers.

Section 213. Assignment of Employees of the Office of International Trade

United States Export Assistance Centers provide information and advice to small businesses seeking to export their goods and services. They play a vital role in assisting small manufacturers navigate the maze of federal and foreign government export regulations. Given the Committee's concern on the health of small manufacturers, the Committee strongly objects to any effort by the Administrator to reduce the number of Administration employees assigned to these Export Assistance Centers. Therefore, the Committee bill requires that the Administrator maintain the level of

staffing of Administration employees to at least the level of staffing on January 1, 2003. The Committee understands that resources may be scarce but the Administrator has sufficient flexibility under the civil service laws to reassign personnel to ensure adequate staffing. The Committee would expect that any workforce transformation plan should be redesigned to meet this statutory requirement.

Section 214. Supervisory and Enforcement Authority for Small Business Lending Companies

This section creates a new § 23 of the SBA. It gives the Administrator specific enforcement and supervisory authority over Small Business Lending Companies (SBLCs) and Non-Federally Regulated SBA Lenders as those terms are defined in the Committee's revisions to § 3. The vast majority of lenders authorized to make loans pursuant to the SBA have their lending and other activities overseen and regulated by federal financial regulators, including loans and corporate transactions related to their general lending practices. The Administrator makes no effort at regulating lending institutions except for their authority to make § 7(a) loans.

In contradistinction, there are a few institutions that are authorized to make loans pursuant to § 7(a) of the SBA that are not typical lending institutions.[112] SBLCs (except for two) are subsidiaries of industrial corporations and thus not subject to any regulation by financial regulators.[113] Non-federally regulated SBA lenders have some state oversight but the extent varies according to state law. The only authority that the Administrator has with respect to these lenders is the ability to prohibit them from making loans pursuant to § 7(a). The Administrator has no authority to take other regulatory action, similar to that available to banking regulators, to protect the public and the federal treasury. The Committee concurs with the Administrator's request that greater authority is needed to regulate SBLCs and Non-Federally Regulated SBA Lenders.

The basic approach adopted by the Committee enables the Administrator to supervise the soundness and safety of institutions authorized to make loans pursuant to § 7(a) but are not otherwise subject to the strict oversight imposed by federal financial regulators. The Committee concurs with the Administrator's request that specific enforcement and supervisory authority are needed. These authorities include the power to: issue cease and desist orders, impose civil money penalties, mandate capital standards, and remove officers and directors who are acting in an unsafe and unsound manner. The power and authority tracks closely the powers granted to the Administrator with respect to regulation of SBICs and their officers and employees. In some cases, the Committee differentiates between regulatory powers applicable to SBLCs and

[112] In at least two cases, SBLCs are wholly-owned subsidiaries of bank holding companies. All transactions by bank holding companies and their subsidiaries are subject to regulation by appropriate federal banking regulators.

[113] 113 Some of the SBLCs are subsidiaries of publicly-traded companies. They must file certain documents with the Securities and Exchange Commission (SEC). However, filing of documents with the SEC is not the equivalent of the annual auditing and oversight performed by federal banking regulators. References to federal financial regulators in this report include: Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, the Farm Credit Administration, Office of Thrift Supervision, and Federal Financial Institution Examination Council.

those applicable to Non-Federally Regulated Lenders. The Committee does not intend that the authority granted in this section be extended to overall corporate management of the parent that owns a SBLC.

The Committee provides for the Administrator to issue capital directives mandating maintenance of certain capital standards. The section also authorizes the Administrator to issue cease and desist orders by the SBLC or Non-Federally Regulated Lender. The Administrator also is empowered to suspend or remove officials that have management responsibility for the entity's lending pursuant to § 7(a) of the SBA. No authority, explicit or implied, is authorized to remove or suspend officials that do not have management responsibilities with respect to § 7(a) lending. Thus, the Committee would not expect that the Administrator take action to suspend the Chief Executive Officer of General Electric Corporation but only its SBLC subsidiary.

Prior to the issuance any order under this section except for a capital directive, the Administrator is required to provide any target of the order a hearing pursuant to §§ 554, 556, and 557 of the Administrative Procedure Act. The bill delegates the responsibility of conducting the hearing to administrative law judges but the final responsibility on determining whether an order should issue rests with the Administrator based on the record developed at the adjudication. The approach is similar to that used by independent federal regulatory agencies such as the Federal Communications Commission or Federal Trade Commission. Those agencies use administrative law judges to conduct hearings and the commissioners use that record as the basis for their legal and policy determination. This bifurcation of the hearing from the decisionmaker ensures that the hearing will be fair and provide an opportunity for the target of an order to make the best possible case before an impartial fact-gathering tribunal.

The Administrator is authorized to issue orders prior to a hearing if extraordinary circumstances exist and the order is needed to protect the financial or legal position of the United States. The Committee expects that the Administrator will use the power to issue orders without a hearing only under those circumstances in which an agency issues a rule without notice and comment, i.e., a truly exigent circumstance[114] or when a federal court would issue an ex parte temporary restraining order (but in order to preserve and protect the federal government rather than the status quo).[115] The bill then provides that the procedures for holding a hearing, including the notice requirement, be commenced within 2 days after the issuance of the order. The Committee believes that this comports with the fundamental fairness exhibited by federal courts when issuing an ex parte temporary restraining order.

The Committee approach defines final agency action for purposes of a challenge to the issuance of an order by the Administrator and authorizes that a challenge may be commenced in federal court within 20 days after issuance of a final order. For purposes of fun-

[114] See, e.g., *NRDC* v. *Evans,* 316 F.3d 904, 912 (9th Cir. 2002); *Utilities Solid Waste Group* v. *EPA,* 236 F.3d 749, 754 (D.C. Cir. 2001) (good cause to forgo notice and comment applies only in emergency circumstances).

[115] Cf. *Granny Goose Foods, Inc.* v. *Brotherhood of Teamsters & Auto Truck Drivers,* 415 U.S. 423, 439 (1974) (noting that ex parte restraining orders necessary evil to protect status quo).

damental fairness to individuals, the Committee also believes that interim relief in federal court is appropriate for a stay of an order issued prior to hearing until the hearing itself is completed. Both of these provisions were added out of an abundance of caution. Although the Committee believes that federal court jurisdiction challenging the Administrator's action can be developed pursuant to "federal question jurisdiction" pursuant to § 1331 of the Title 28, United States Code, the Committee determined that explicit authority to challenge the Administrator's orders in federal court removes any question that this decision has been remitted solely to the discretion of the agency and is not subject to review under *Heckler* v. *Chaney,* 470 U.S. 821 (1985).

The Committee authorizes a court to appoint a receiver for the entities subject to regulation pursuant to this section. The receiver is entitled to take possession of assets of the SBLC or Non-Federally Regulated SBA Lender. The Committee intends this authority to extend only to the SBLC or Non-Federally Regulated Lender's portfolio of loans or other instruments guaranteed by the Administrator including any debentures or participating debt or securities issued pursuant to the SBIA.

The Committee believes that suspension, revocation, or cease and desist is an extraordinary remedy. Each requires an extremely high burden of proof related to willful misconduct that may present a difficult case for the Administrator to prove. Therefore, the bill also provides the Administrator with the authority to seek court-imposed civil penalties for the failure to file reports required by the Administrator. Such penalties shall issue when the failure to file is willful and not due to neglect. The failure to file required reports for more than two reporting periods is, in the opinion of the Committee, sufficient, but not the only, evidence of willful neglect.[116] The Committee expects the Administrator to promulgate regulations outlining the factors that determine willful neglect for the purposes of civil penalties (as an aid to the entities regulated pursuant to § 23). These regulations also must contain standards for exempting SBLCs and Non-Federally Regulated Lenders from the civil penalty provisions as well as the procedures used for determining whether the institution qualifies.

Section 215. Reauthorization of Paul Coverdell Drug-Free Workplace Program

The Committee recognizes that the small businesses need drug free workplaces. Drugfree workers boost productivity and reduce the costs of health care coverage and absenteeism. Nevertheless, in times of scarce resources, the Committee determined that some of the resources devoted to Drug-Free Workplaces are better utilized in other areas, such as creating new positions for procurement and commercial marketing representatives or expanding other business development programs. Therefore, the Committee reduced the funds authorized for the Drug Free Workplace program overseen by the Administrator.

[116] The Committee presumes that any entity authorized by the Administrator to issue guaranteed loans shall also have sufficient familiarity with its regulations to understand when reports need to be filed.

Section 216. Women's Business Center Program

This section amends the Women's Business Center Program created by § 29 of the SBA. The current version of the program creates women business centers and, if they do not have sufficient matching funds, authorizes them to request additional funding through a sustainability pilot program. The Committee considers this structure to be both unworkable and illogical.

The Committee takes the basic approach that it did in the rewrite to the SBDC program in § 212 of the bill. The Administrator selects a grantee or grantees from applicants. The Administrator then enters into a grant agreement specifying how the grantee will deliver the services to be provided at a women's business center (WBC). Instead of the women's business center being the recipient of the grant, the WBC becomes the location at which the services are provided by the grantee. This enables a single grantee to operate a network of WBCs or combining one center with various satellite offices. Management of the center is then delegated to the grantee. The Administrator then performs oversight to ensure that the grantee is in compliance with the grant agreement and is delivering the services set forth in the grant agreement. The Administrator, as with the SBDC program, can revoke a grant if the grantee has not complied with the terms of the grant agreement.

Parallels between the WBC program and the SBDC program cannot be taken too far. Grantees in the SBDC program have the expectation (to the extent such funds are appropriated) to receive federal funds as long as they are in compliance with the program. The WBC program was started as a temporary funding program with the expectation that ultimately, grantees that operate WBCs would obtain necessary outside funding to make further federal funding obsolete. The Committee's approach maintains that principle—WBC grant funding still is temporary under the bill. The Committee however reformulates the "sustainability pilot" aspect of the WBC program into a program authorizing applications from grantees for continued federal funding based on the need of the WBC. Ultimately, a grantee will have to be sustainable without federal funds or face closing because the Committee does not make the expectation of funding permanent.

The following subsection analysis only details those changes made by the Committee rewrite. If a subsection is not identified, then the Committee made no change in it except for any conforming and redesignations required as a result of the rewrite.

A. Definitions—§ 29(a)

The Committee defined a WBC as the site at which services are delivered by grantees. To that extent, the definition tracks that of the SBDC. However, the parallel cannot be taken further. Congress enacted the SBDC with the expectation that state agencies and boards of higher education would serve the entire state. No such expectation exists in the WBC program. Any not-for-profit organization is eligible to apply for a grant to operate a WBC. Thus, the definition of a WBC must incorporate affiliated WBCs operated by the same grantee but in different parts of the same state or even in different states.

B. Authority—§ 29(b)

This subsection authorizes the Administrator to issue grantees an initial 5-year award and any extension of funding for which the grantee is eligible. The grantee winner must agree to provide services for the benefit of small business concerns owned and controlled by women. The term "small business concern owned and controlled by women" is defined in § 3 of the SBA.

The Administrator may not award a grant unless the grantee agrees to provide the services set forth in this subsection. The services run the full range of counseling services so that "clients" are able to plan, establish, finance, and operate a small business concern.

C Submission of 5-Year Plans—§ 29(c)

Applicants are required to submit a 5-year plan outlining the services to be provided, the target population, the area to be served, and the fundraising activities needed to meet the grantee's non-federal matching share. The Committee expects the Administration to reject any application that does not comport with the submission requirement in this subsection. Regulations should be promulgated setting forth the Administrator's application procedures.

The bill authorizes the Administrator to utilize any method of expedited solicitation and award. This avoids the possibility that the grant awards would be viewed as federal contracts and subject to federal procurement law. The procedures adopted by the Administrator must not foreclose the opportunity for any eligible organization, including those that have historically served small business concerns, to apply for a grant.

D. Criteria—§ 29(d)

Unlike the SBDC program (which is well established with grantees that have operated in the program for many years), the Committee expects that multiple organizations will apply for both initial grants because many areas of the country still are not served by grantees operating WBCs. Thus, the Administrator needs to establish standards for selecting among the grant applicants.

The criteria should be made available to the public. Although in most cases, codification in the Code of Federal Regulations constitutes sufficient notice of standards, the Committee believes that reliance on the Code of Federal Regulations is inadequate. As a result, the Committee adapts a procedure from federal procurement law and mandates that the selection criteria utilized for selection of grantees shall be disclosed in the solicitation.

E. Selection of Grantees—§ 29(e)

Under the selection criteria adopted by the Committee, the Administrator is first required to determine which applicant best satisfies the selection criteria set forth in the solicitation. If all of the applicants are considered equal in the solicitation's selection criteria, then the Administrator shall apply this subsection's selection preferences.

The first selection preference for all equally rated applicants is the ability to serve socially and economically disadvantaged women. Thus, the Administrator should select an applicant that

demonstrates its capacity to hire bilingual women business advisors to serve certain populations rather than selecting an applicant whose plan is equal but is serving middle-class neighborhoods in suburban areas of a major city. The second and third preferences are designed to ensure that areas currently served by a certain number of centers will continue to be served by the same number of centers. Thus, if the Administrator has two competing applicants and one is for a state that had four centers and another applicant in a state that has two, the Administrator should select the one interested in serving the one with four centers. The Committee considers this appropriate because the larger number of centers represents an appropriate proxy for demand for WBC services.

F. Funding—§ 29(f)–(g)

The Committee rewrite does not change the Administrator funding of grantees or the matching requirements during the grantee's first five years. Nor does the Committee modify the requirements for obtaining matching funds except to the extent that mandate is altered by the extension of funding.

G. Annual Program Examination—§ 29(i)

The Committee adds an additional criterion to the Administrator's program examination. The Administrator is now required to assess the grantee's fundraising efforts and whether those efforts will enable the grantee to sustain operations after federal funds are cut. Based on this assessment, the Committee expects grantees to modify their fundraising efforts to increase the probability that they will not have to apply for extensions of federal funding as set forth in this section.

The Committee recognizes that grantees do not have elaborate staffs to perform administrative functions. Inspections by Administration personnel are time-consuming and take grantee personnel away from their primary function—serving their clientele. Therefore, the Committee requires that the annual assessment made by the Administrator shall be based on no more than two site visits per year. The Committee recognizes that there may be certain extraordinary circumstances in which more than two site visits are necessary. This subsection provides that the Administrator may require more than two but only a finding of extraordinary circumstances pursuant to regulations adopted by the Administrator.

H. Renewal of Funding and Termination—§ 29(j)

This subsection authorizes the Administrator to annually assess the performance of the grantee and terminate funding. The Committee believes that the assessment should commence in the grantee's second year because it would be unfair to measure performance in the year the grantee started operations.

Current law authorizes the Administrator to terminate funding if the grantee fails to provide or provides inadequate levels of information needed to perform the annual assessment or complete the report to Congress. The Administrator also is authorized to terminate funding if the grantee has failed to meet its obligations with respect to services that must be delivered. Regulations must be promulgated that governs the termination of funding for failure to provide services required by this section.

The Committee received evidence that grant agreements are incorporating a requirement to serve a certain number of applicants who are seeking loans under § 7(a) of the SBA. Such requirement is simply inappropriate. Therefore, the bill prohibits the Administrator from incorporating into a grant award any requirement concerning loans made pursuant to § 7(a) of the SBA or Title V of the SBIA.

Paragraph 3 clarifies when the Administrator may extend funding. The bill prohibits the Administrator from providing additional funds beyond five years unless the grantee seeks an extension of federal funding pursuant to the requirements of this section or applies as a new applicant after its initial grant or any extensions of funding have been provided. The Committee does not intend that a terminated grantee receive any preference in the selection of new applicants except to the extent that the operation of a WBC demonstrates the capacity to serve small business concerns owned by women or women interested in started a small business concern.

The Administrator must offer the grantee the opportunity for a hearing prior to the termination of funding. Such hearings shall be conducted pursuant to the formal hearing requirements of the Administrative Procedure Act and the Committee would expect an administrative law judge to preside. The Administrator is required to base any final decision on the record developed at the hearing and only the record developed at the hearing. Nothing in this provision shall prohibit the Administrator or any law enforcement agency from taking appropriate action against a grantee for violations of federal law including termination of funding.

I. Management Report—§ 29(k)

The Committee only makes one change to the requirement information in the management report submitted by the Administrator to Congress. The Committee believes that it is appropriate for the grantees to track and the Administrator to report the amount of time training and counseling women.

J. Authorization of Appropriations—§ 29(l)

The Committee raised the authorization levels to allow for slight growth in the program. For reasons already set forth elsewhere in this report, the Committee adopts a two-year authorization of appropriations.

The Committee continues to authorize a set percentage of grant funds for use by the Administrator in operating the program. The Committee raised that percentage from the current level of 1.6 percent to account for the additional management responsibilities involved in promulgating regulations and selecting applicants.

Currently, only 30.2 percent of the funds made available can be used in the "sustainability" pilot. The Committee believes that this represents an adequate amount of funds for extensions of federal funding. The Committee rejected the suggestion to increase the amount of funds made available for additional funding beyond the five years. Increasing that amount creates a disincentive for grantees to intensify their private fundraising efforts if they believe that they will be able to rely on federal largesse. Additional amounts devoted to extensions of federal funding reduce the funding available to open new centers which was the original thesis of the program—

once grantees became self-sustaining (expected for most after 5 years), more money would be available to open new centers. The Committee believes that this underlying principle should not be overturned and thus maintains the level for extensions of funding at current percentages.

Given the Committee's interest in opening new centers, the Committee determined that funds not utilized for extensions of federal funding should be reallocated to new grantees rather than increasing funds made available to existing grantees.

K. Extensions of Federal Funding—§ 29(m)–(n)

The Committee revamps the "sustainability" pilot program into an extension of federal funding. Extensions are available for a maximum of five years. Thus, a grantee will have the possibility of federal funding sustained for a total of ten years. Applications are required to be submitted during the fourth year of the grant.

Any grantee that has not met the criteria for continued funding of the original grant for the fifth year will be ineligible to receive an extension of federal funding. The Committee believes that limitation is appropriate. A grantee that has its funding eliminated for the last year of the original grant should not be permitted to obtain an extension and take funding away from more worthy grantees.

Extensions of grant funding shall be limited to those grantees, that in the determination of the Administrator, have a demonstrated record of serving predominantly socially and economically disadvantaged women and are unable to meet their matching requirements due to their target populations. The Committee believes that grantees who serve women who are poor and minorities will have a much harder time attracting donors. Therefore, the Committee requires that the Administrator give priority to grantees serving that population. If no grantees apply that serve predominantly socially and economically disadvantaged women, then the Administrator shall first give preference to those grantees meeting the dollar-for-dollar match requirement. This provides an additional incentive for grantees to establish solid fundraising programs. Finally, if none of the grantees meet any of these preference requirements, the Administrator shall establish standards for ranking the grantees to award extensions of federal funding.

Any extension of federal funding may be conditioned on the grantee obtaining a match of two non-federal dollars for each federal grant dollar. The Committee would expect that the Administrator to impose this requirement on all grantees that receive extensions of federal funding except those serving predominantly low income, minority women.

The Committee rejects the proposition that the preferences set forth in the Committee's bill are unachievable or somehow disadvantage certain grantees. Neither assertion is correct. If, as most grantees assert, that they do not meet any of the preferences for serving low, income minority women, they still will be able to receive federal funding. On the other hand, grantees that serve predominantly low-income minority women should be accorded greater preference in obtaining extensions of federal funding because the clientele will have the smallest social circles with potential donors.

Section 217. HUBZone Program

This section amends § 31 of the SBA and makes only a few, albeit significant changes to the operation of the HUBZone program. Other changes to the HUBZone program made by the Committee are discussed elsewhere in this report.

First, the Committee transferred the requirement for maintaining a list of HUBZone qualified businesses from § 3 to § 31. The Committee determined that maintenance of a list of businesses is an operational and not definitional requirement of the program.

Second, the Committee did not mandate that contracting officers be required to offer sole source contracts to HUBZone-qualified firms. The Committee took this approach to resolve a dispute that created a serious question whether HUBZone-qualified firms could obtain a sole source contract and thereby eliminate the sole source preference for firms in the § 8(a) program. The original intent of the HUBZone legislation, in the view of the Committee was not to supplant the preference accorded § 8(a) firms.[117] The Committee's modification—from "shall" to "may" authorizes the use of a sole source preference but does not dictate it. The Committee intends that this change (along with a number of other changes already described elsewhere in this report) to be interpreted to mean that the HUBZone preference shall not supersede the preference for § 8(a) firms.

Third, the Committee eliminated the phrase "Nothwithstanding any other provision of law." That phrase added to the confusion concerning the intent of Congress whether the § 8(a) preference would be supplanted. The Committee's revision (along with changes on preferences established in § 210 of the bill) ensures that the original intent not to alter the preferences are maintained.

Fourth, the Committee authorized restricted competition among HUBZones firms rather than mandate the requirement. The change creates the same type of flexibility that contracting officers currently have with respect to restricted competition solely to small businesses. The Committee fully expects that contracting officers will restrict contracts to competition among HUBZone-qualified firms if the contracting officer has the expectation that two or more HUBZone-qualified firms will submit offers. The Committee rejects the notion that the change will have a dramatic impact on the ability of HUBZone-qualified firms to obtain contracts. Pursuant to the changes made in § 210 of the bill, a contracting officer will first have to seek out HUBZone-qualified firms before opening the solicitation to all small businesses or all businesses.

Fifth, the Committee only made one modification to the price preference requirement in the HUBZone legislation. The bill eliminates the restriction on the price preference for the purchase of agricultural commodities. The language was enacted as part of the 2000 reauthorization bill and was placed in there at the behest of

[117] Whether the sole source preference for § 8(a) firms is constitutional, is not a matter for the Committee to determine. The Committee recognizes that the last opinion issued by the Department of Justice concludes that the program authorized by § 8(a) is constitutional and no subsequent report has been drafted. Furthermore, the Committee recognizes that the *Adarand* decision did not definitively resolve the issue of constitutionality of the program. Finally, the Committee does not wish to predict how the Supreme Court would address the issue given its most recent rulings on affirmative action. Despite differences of opinion on the constitutionality of the sole source preference under the § 8(a) program, the Committee assumes that the program is constitutional.

some large grain trading firms. Ostensibly, the public policy rationale was to keep the down the cost of food assistance programs operated by the Department of Agriculture.[118] The Committee believes that the real rationale was to either maintain the market share of these firms in the food assistance programs or maintain their margins. In fact, HUBZone-qualified firms involved in selling commodities (raw or processed) believe the removal of the price preference will significantly benefit their opportunities to win federal contracts from the Department of Agriculture. The Committee does not believe that an exception designed, in whole or in part, to assist large businesses compete successfully against small businesses should be countenanced in the SBA.

Sixth, the Committee reduced the authorization for appropriations to operate the program. The Committee believes that is appropriate because some of the programmatic changes in the HUBZone program require utilization of personnel, such as procurement center representatives and district counsel, who are funded through the overall salaries and expenses account in appropriations.

The Committee also rejects the notion that the changes made in the bill will devastate the HUBZone program. Although price is an important factor in selecting a federal government contractor, it is not the sole factor. The Federal Acquisition Regulations require that contracting officers select the contractor that can provide the best value to the government.[119] In many cases, quality, time of delivery, or other factors may play a much greater role than price. Thus, it is not suprising that the federal government has not met its goals for procurement from HUBZonequalified firms because other factors may play a more important factor in the broad discretion given contracting officers.[120]

The Committee recognizes that the changes made by the bill, including the elimination of the definition of "agricultural commodity" enables regular dealers in goods to enter the market for agricultural commodities. Brokering currently is authorized for all other goods purchased by the federal government under the HUBZone program. The Committee sees no reason to exclude brokers from this requirement solely for agricultural commodities. In fact, the Committee believes that the potential entry of brokers will force existing large firms to maintain lower margins on their bids when responding to contracts for agricultural commodities.

Section 218. Other Repeals and Reorganizations

This section makes technical and conforming changes required by the Committee's rewrite of the SBA. Subsection (a) revises the severability provision to reflect the reenactment of the redrafted sections of the SBA. Subsection (b) repeals and reserves certain sec-

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[118] The Conunittee has no evidence that the cost of commodities since the creation of the HUBZone program in 1997 has increased the cost of commodities to the federal government. In fact, statistics available to the Committee demonstrate that very few contracts issued by the Department of Agriculture are won by small businesses because of the price preference. More importantly, the Committee believes that the price preference is only one aspect of source selection and other requirements may play a more significant role in determining the winning bidder.

[119] 48 C.F.R. § 1.102(a).

[120] *See National Council of Fishing Vessel Safety and Ins.,* B–239303, 90–2 CPD ¶T 127, at 4 (1990) (recognizing broad discretion given contracting officers will not be overturned in bid protest unless evidence of possible fraud or bad faith exists).

tions of the SBA. As already noted elsewhere in this Committee report, the sections repealed represent programs that are: no longer utilized by the Administrator; or have outlasted their limited authorization periods; or can be delivered by other parts of the Administration. The sections reserved are: 19, 24, 25, 26, and 28.

Section 219. Rules of Construction

Due to the significant redrafting and concomitant reenactment of the SBA, the Committee determined that it was necessary to include rules of construction to protect the Administration and small business concerns.

Subsection (a) provides a catchall to ensure that existing references in the SBA are deemed to refer to the corresponding rewrite made in Title II of the Committee's bill. Thus, a reference in the current SBA that refers to the "sue and be sued" power in § 5 by operation of this subsection now means the same provision in § 4.

Subsection (b) contains a provision to maintain the continuing effect of existing regulations made under the authority vested in the Administrator until such regulation is repealed, amended or superseded. The Committee believes that the provision is necessary to ensure continuity of existing Administration programs. Furthermore, the provision eliminates any legal questions concerning the validity of existing rules drafted pursuant to the previous version of the SBA. For example, the Committee's bill grants rulemaking authority to the Administrator not the Administration. The Committee can envision an action being brought by a disgruntled small business concern contending that the existing regulations are invalid because they were promulgated under authority granted to the Administration. While the Committee does not believe that type of lawsuit has any chance of success, the savings provision in subsection (b) eliminates any such question.

Subsection (c) addresses the issue of repeal by inference. Canons of statutory construction state that repeals by implication are not countenanced.[121] The Committee does not intend that reenactment by this bill changes the validity or invalidity of any existing section of the SBA.

TITLE III

Section 301. Report Regarding National Database of Small Manufacturers

The Committee is of the opinion that institutions of higher education can play a vital role in reviving small manufacturers. Universities must purchase large amounts of standard manufactured products (often on an annual basis—such as furniture for dormitory rooms). They also often purchase very sophisticated tools and laboratory equipment that small manufacturers may produce. The procurement forums that SBDC grantees are required to hold constitute one avenue for increasing sales by small manufacturers to universities. However, there are thousands of universities, colleges, and community colleges in the United States that are not hosts to SBDCs. These institutions do not hold procurement forums so they are not exposed to the capabilities of small manufacturers.

[121] *United States* v. *Will,* 449 U.S. 200, 221–24 (1980).

To resolve this problem, the Committee believes that PRO–NET represents a useful model for making institutions of higher education aware of the capabilities of small manufacturers. PRO–NET is a database operated by the federal government in which the capabilities of numerous small businesses are outlined. Contracting officers use PRO–NET to find small businesses capable of providing goods and services. Section 301 requires the Administrator and the Association of Small Business Development Centers to study the viability of creating a PRO–NET-like database that all institutions of higher education can use to identify small manufacturers capable of providing their procurement needs. The bill also requires a report to Congress on the viability and cost to establish such a database.

Section 302. Workforce Transformation Plan

The current Administrator recognizes the need to revamp the Administration's workforce to provide greater assistance to small business concerns. The Committee concurs with the Administrator's goal. However, the Committee is concerned that it has not been supplied with the goals (other than to deliver for small business) or processes for transforming the Administration workforce. Given the absence of information provided to the Committee on the adequacy of a workforce transformation plan, the Committee determined that it would be appropriate to provide the basic statutory framework authorizing the Administrator to undertake workforce transformation and establish goals that need to be met by the plan.

Subsection (a) authorizes the Administrator to reorganize the agency and establishes goals for the Administrator to meet. The goals are broad enough to give the Administrator discretion in transforming the workplace but are designed to focus the transformation on providing greater assistance to small businesses. In the view of the Committee, the most important goal is increasing the amount of federal prime contract dollars awarded to small businesses. The next most significant goal is to increase the utilization of small manufacturers as subcontractors to federal prime contractors.

Subsection (c) provides the primary workforce transformation mechanism to achieve increased federal procurement dollars being generated by small businesses. Procurement Center and commercial marketing representatives are the employees assigned by the SBA to increase federal prime and subcontracting dollars. The Committee is convinced that the Administration needs more of these representatives. One mechanism for increasing their numbers is to reassign deputy district directors pursuant to § 206 of the bill. Another vehicle for increasing the number of procurement center and commercial marketing representatives is to have the workforce transformation plan reassign qualified employees to these positions. The Committee sets numerical goals to ensure that the Administrator provides sufficient numbers of these Administration employees. The Committee adopted this approach because it was concerned that a simple requirement to increase the number of procurement center and commercial marketing representatives would allow the Administrator to make only minor increases in the number of these representatives. Therefore, the Committee required the Administrator to meet certain minimum levels for these positions.

It is the intention of the Committee that the positions can be filled by existing personnel.

Subsection (b) requires that the Administrator's workforce transformation plan also reduce operating costs by one percent. The Committee believes that this can be accomplished through more efficient use of existing resources, better utilization of employees, and not replacing retirees in certain circumstances. The Committee does not expect the transformation to require a reduction-in-force.

Subsection (d) provides an open-ended authorization of appropriations specifically to carry out the workforce transformation plan. Thus, appropriators are at liberty to allocate what they believe are sufficient funds necessary to undertake the workforce transformation plan developed by the Administrator designed to achieve the objectives set forth in subsection (a).

The Committee also requires that the Administrator provide a report to Congress on the outcome of the workforce transformation plan. The Administrator must delineate how the transformation has met the goals set forth in subsection (a). Submission of the report will enable the Committee to consider further alterations or changes to the SBA in order to complete the workforce transformation.

Section 303. Repeal of Certain Provisions of the Disaster Relief Act of 1970

The Committee repealed § 237 of the Disaster Relief Act. That provision authorizes the Administrator to increase the size of disaster loans for businesses that are major sources of employment. Given the changes that the Committee made in § 7(b) enabling the Administrator to specify a maximum loan size and circumstance when such size will be waived, the Committee determined that the authority in § 237 of the Disaster Relief Act is mere surplusage. In an abundance of caution, the Committee added a provision stating that the repeal does not affect any loan made prior to the date of enactment of the bill.

Section 304. Regulations on Size Standards of Franchisees

Section 304 of the bill directs the Administrator to repeal 13 C.F.R. § 121.103(g)—the regulation concerning affiliation based on franchise and license agreements. In addition to repealing the rule, the Administrator is required to promulgate a new regulation addressing affiliation standards for franchise and license agreements. The Administrator must provide an opportunity for notice and comment and complete the rulemaking within 180 days after enactment of the bill. If the Administrator does not complete the rulemaking within 180 days, all franchisees and licensees are considered small business concerns for purposes of the SBA. The Committee recognizes that the Administrator's failure will designate very large businesses as franchisees. For purposes of subsection (b), the Committee does not consider a franchisor that also is a franchisee to be a franchisee for designation as a small business concern. Given the consequences of failing to meet this deadline, the Committee fully expects the Administrator to complete the rulemaking within 180 days.

The statutory factors to determine affiliation for purposes of § 3 of the SBA include whether the franchisee or licensee: (1) retains

a majority of the profits but at least 51 percent;[122] (2) bears the burden of its losses; (3) shares no common ownership or management personnel with the franchisor or licensor; (4) maintains daily control over its operations including determining who its customers will be;[123] and (5) is not subject to excessive restrictions on the sale of its business given the interest of the franchisor or licensor in protecting the goodwill of its trademarks, tradenames, or service marks.[124]

The Committee takes this action because of a recent decision by the Office of Hearings and Appeals (OHA) reaffirming that certain franchisees, due to the strictures of their franchise agreement, were affiliated with the franchisor and therefore something other than small. A request to alter this decision through rulemaking was made by the Committee but the Administrator has not yet acted on the decision. That left the Committee with no choice but to take legislative action.

In *Garvin Enterprises,* SBA No. SIZ–2002–07–01–26 (2003), the franchisor performed certain administrative functions for the franchisee. OHA concluded that the performance of these functions created a sufficient affiliation between the franchisor and the franchisee to find that the franchisee was something other than small.

The decision by OHA departed from the Administrator's traditional analysis of control in determining whether affiliation exists between franchisees and franchisors in the temporary staffing industry. The Committee believes that the decision on affiliation should rest on such factors as the ability of the franchisee to retain profits of its business, whether it bears the burden of financial loss

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[122] For purposes of determining the profit, the Committee intends the Administrator to exclude any payments by the franchisee or licensee to the franchisor or licensor as required by any agreement. The Committee does not consider royalty payments to be part of the franchisee or licensee's profits but rather a cost of doing business. The Administrator should not consider profits to be the equivalent of gross revenue (on which royalties are frequently based).

[123] Technically, businesses do not determine customers. They open their businesses and customers patronize the business if the customers believe that their needs can be satisfied by the business. The Committee recognizes that businesses are subject to various statutory and regulatory restrictions that may prohibit them from serving all potential customers. For example, taverns are prohibited from serving alcohol to individuals under the age of 21. The Committee does not consider that a restriction on the ability of a business to serve any willing customer. The restriction only should apply if the business is prohibited by another for-profit business from serving any willing customer. In developing the new rule, the Administrator must be mindful that certain franchisees and licensees are restricted from serving certain groups of customers and this does not rise to the level of control of the franchisee or licensee's customer base. For example, the Committee does not believe that a prohibition imposed by rental car franchisors or licensors that prohibit rentals to individuals under the age of 25 constitutes control over the customer base. The rental car agency still is able to offer service to most of its customers without the approval or disapproval of the franchisor or licensee.

[124] Almost all franchising and licensing agreements require the franchisee or licensee to obtain the franchisor or licensor's approval before selling the business. E.g., *Larese* v. *Creamland Dairies, Inc.,* 767 F.2d 716, 717 (6th Cir. 1985); *Burger King* v. *Ashland Equities, Inc.,* 217 F. Supp. 2d 1266, 1276 (S.D. Fla 2002); *Perez* v. *McDonald's Corp.,* 60 F. Supp. 2d 1030, 1032 (E.D. Cal. 1998); *Trient Partners I, Ltd.* v. *Blockbuster Entertainment Corp.,* 959 F. Supp. 748, 751 (S. D. Tex. 1996). Typically, the most valuable asset of a franchisor or licensee is the trademark, servicemark, and tradename associated with a particular method of operation. If franchisees or licensees were permitted unbridled discretion to sell the franchise or license, the purchaser might not have the requisite skill, training, or resources to protect the value of the trademark by operating the franchise or license according to the procedures dictated by the franchisor or licensor (presumably such operational procedures were developed to provide the best protection to the franchisor or licensor's trademark). As a result, franchisors and licensees include restraints on alienability to protect the value of their names, service marks, and operational procedures. The restraint also protects the franchisor or licensor from unwitting disclosure of its operational manuals that competitors could cannibalize and use to start similar competing businesses. The Administrator, in considering development of new rules, should take into account the need of franchisors and licensors to protect their trademarks through the protection of their business plans and operational manuals.

from business operations, whether the franchisee must provide significant amounts of financing (without any recourse for indebtedness repayment to the franchisor), and any commonality in management. OHA, instead, focused on the performance of administrative functions (many of which are ministerial and if contracted out to someone other than the franchisor would not be considered to result in an affiliation).[125]

This misplaced emphasis on administrative functions fails to recognize the important functions that franchisors and licensors play in the business operations of their franchisees and licensees. If these administrative functions create affiliation standards, the Committee believes that OHA also could conclude that performance of cooperative purchasing of supplies or advertising or the issuance of operational manuals also constitute affiliation. The Committee intends the Administrator to redraft the franchise and license affiliation rule to reemphasize actual indicia of control—common management and financial risk rather than simple ministerial services even if the ministerial services result in the franchisor acting as the "employer of record." In short, section 304 was added to the bill to overturn the *Garvin Enterprise* decision and prevent the Administrator from extending that misguided decision to other areas of operation by franchisors and licensors.

Section 305. Temporary Small Business Development Center Assistance to Indian Tribes

Small business development centers (SBDCs) are operated by grantees in every state and provide operational assistance to small business concerns. The small business development centers are located throughout the state. Access to small business development centers by Native Americans is reduced due to their relative isolation from other populations served by small businesses.

Economic statistics among Native Americans[126] soundly demonstrates the need for increasing the small business economic base. Approximately 60 percent of the Native American population lives on or immediately adjacent to federal Indian reservations. Unemployment among federal Indian reservation populations is about 45 percent. Despite the difficulties of life on reservations and adjacent land, Native Americans do own small businesses and their gross receipts continue to grow dramatically. The Committee is convinced that focusing the resources of SBDCs on small businesses will continue to improve the economic conditions for Native Americans.

The Committee's solution to the problem is the creation of a pilot project for SBDC grantees from selected states to assist Native American small businesses. Grantees shall receive no more than $300,000 to operate a Native American SBDC.[127] Funds allocated to an existing grantee are not counted against the funding formula established in § 21. The Committee authorizes separate appropria-

[125] Many businesses contract out computer service maintenance and payroll operations to third parties. The Committee is not aware of any interpretation by the Administrator or OHA that would result in an affiliation because these administrative functions have been performed by a third-party even though they are a critical part of business operations.

[126] References in this report to Native Americans also includes Native Alaskans and Native Hawaiians.

[127] In lieu of the pilot program, the Committee considered strengthening the Tribal Business Information Center program. That program has had, in the view of the Committee, little success. Few resources are devoted to the program. The Committee believes that a proven delivery program—the SBDCs—will offer far superior service to Native American small businesses.

tions and intends that no money authorized or appropriated to carry out the provisions of § 21 shall be used to carry out the provisions of this section.

The Grantees shall be selected from states in which the Native American populations account for at least one percent of the area's total population. The Committee adopted this limitation in an effort to focus grant resources on the states with the largest Native American populations.

Selection of grantees follows the model established by the Committee in its rewrite of the SBDC program. The selection criteria are modified to focus on the ability of applicants to serve Indian reservations. The Committee considers the capability of locating centers on and adjacent to reservations a critical element in the selection process.

In determining the services that shall be provided and the location of SBDCs, the grantee must consult with the local tribal councils. The Committee expects that the grant applications will demonstrate that such discussions have taken place.

Section 306. Temporary Small Business Development Center Assistance for Vocational and Technical Entrepreneurship Development

Many individuals with technical and vocational training have the skills necessary to start their own successful small businesses. What they lack is the knowledge related to creating a business plan, obtaining necessary capital, complying with various legal and regulatory requirements, and marketing their businesses. Studies demonstrate that small businesses receiving counseling and other technical assistance in business operations are twice as likely to succeed as small businesses that do not receive such training. Furthermore, the Committee is convinced that many skilled workers currently being laid off in the manufacturing sector can use their skills (as machinists, tool and die makers, etc.) to start businesses. The pilot program established by this section is designed to fill that gap.

SBDCs grantees will offer individuals in high schools, vocational, and technical schools the resources necessary to convert their skills into the establishment and operation of a business. The Committee expects that the grantees will work with the schools' in developing an entrepreneurial education curriculum that address items such as: developing a business plan, obtaining a loan, and marketing the business.

The grant application process is similar to that specified in the revisions made to the SBDC program. Successful applicants will be those that demonstrate the best capacity to educate vocationally trained individuals with the skills necessary to start and operate a small business.

Grantees are limited to an award of $200,000. As with the pilot Native American SBDC program, a separate authorization exists for this program and no funds appropriated to carry out the purposes of § 21 of the SBA shall be used to fund this grant program. In addition to meeting all other grant requirements of § 21 (except for the matching funds), grantees are required to report to the Administrator on how such funds are being utilized. The Committee

expects that these reports and other information will form the basis of the Administrator's evaluation of the pilot program.

The association recognized pursuant to 21 will act as a clearinghouse of information regarding vocational and technical entrepreneurship. The Committee expects that the association and the Administrator to work collaboratively in the collection and dissemination of vocational and technical entrepreneurship education.

Section 307. Very Small Business Concern Contract Data Collection

The Committee bill makes the "very small business" contracting program permanent. Current statistics are only kept on small businesses and very small businesses represent a subset of that category. The bill requires that the Administrator and the Administrator of the General Services Administration create a data element to track contracts awarded to "very small businesses." Creation of the data element will enable the government to track the number of contracts awarded to very small businesses.

Section 308. Very Small Business Concern Pilot Program for Home-based Businesses

Many very small businesses have their genesis as home-based businesses. According to data from the Administration, approximately 37 percent of the new jobs created in 1998 and 1999 (the latest available statistics) were created by micro-enterprises, the majority of which are home-based. These home-based businesses also provide numerous services to the federal government, such as consulting and economic research.

Recognizing the growing importance of home-based businesses, the Committee decided to require that at least one award made pursuant to the very small business program be awarded to a home-based business. The pilot program will last for four years. The Committee believes that the pilot program will be able to demonstrate the capabilities of home-based businesses to contracting officers. By increasing the overall awareness of these micro-enterprises by federal procurement officials, the Committee believes that will generate greater opportunities for homebased businesses. Increased federal contracting opportunities should spur additional growth of home-based businesses.

The section defines a home-based business as one in which the headquarters, main office, and records are located at the primary residence of the majority owner. The Committee expects that the primary residence to have the same definition as principal residence in 26 C.F.R. § 1.121–1(b)(2).

The Committee expects contracting officers to work closely with the Administrator and the Office of Small and Disadvantaged Business Utilization in order to identify potential contracts that would be suitable for award to home-based business. While only one such contract needs to be awarded under the pilot program, the Committee expects contracting officers to award through competition more than one such contract.

Section 309. Socially and Economically Disadvantaged Business

Socially and economically disadvantaged businesses, other than those that participate in the program established pursuant to § 8(a) of the SBA, are afforded a price evaluation preference similar to

that given to HUBZone-qualified firms. This price evaluation preference is valid only to October 1, 2003. The Committee believes that socially and economically disadvantaged businesses can play a key role in economic development. As a result, the Committee believes that the price evaluation preference should be maintained for at least two more years.

Section 310. Study and Report on Effectiveness of Aggregate Limitations on Amount of Assistance to any Single Enterprise

Current law prohibits a SBIC from contributing more than 20 percent of its private capital in any one small business concern. The premise of the restriction is to ensure that both the SBIC's private capital and the leverage provided by the Administration is diversified to prevent the failure of one business from impairing the entire SBIC. This follows standard models of portfolio management through the spreading of risk.

The Committee does not question the premise for the aggregate limitation. However, the Committee is concerned that the limit may unduly prevent SBICs from investing in small manufacturers. As a compromise, the Committee's bill directs the Administrator to study the issue and report back to Congress within one year. The Committee will review the report and take appropriate legislative action based on the report.

Section 311. Study and Report on Coordination of New Market Venture Capital Program With New Markets Tax Credit Program

The Committee modified the definition of the region eligible for financing under the New Market Venture Capital program to align it with the New Markets Tax Credit under § 45D of the Internal Revenue Code. This section requires the Administrator to suggest modifications in the Administration of both programs to bolster the New Market Venture Capital program. In developing these suggestions, the Committee expects the Administrator to confer with the Commissioner of the Internal Revenue and take recommendations from outside groups. The Committee does not believe that the report needs to be extensive and can easily be completed within 90 days after enactment.

Section 312. Study and Report on Premier Certified Lenders Program

One of the primary reasons rationales for House consideration and passage of H.R. 923 was to relieve from excessive funding of their loan loss reserves. No accurate data exists concerning whether premier certified lenders have overcapitalized their loan loss reserves. This section requires the Administrator to conduct a study to determine whether overcapitalization exists and any alternatives that can reduce the overcapitalization while protecting the government from risk of loss. The Committee believes that the Administrator does not have sufficient expertise to assess the adequacy of risk-based capital standards for lenders. Therefore, the bill requires that the Administrator contract the study to another federal agency with community lending expertise or a member of the Federal Fi-

nancial Institutions Examination Council (FFIEC).[128] We would expect that any such contract should cost no more than $75,000 and, given the expertise of the federal agency, completed within 180 days. The deadline is short because the Committee wants to make any necessary changes in order to minimize risk to the federal government. The requirement to contract with another federal agency should eliminate any delays that would otherwise be imposed as a result of federal contracting rules.[129]

Section 313. Data Collection

This section requires that the Federal Procurement Data System be modified to track contracts made through the social and disadvantaged business program established by § 7102 of the Federal Acquisition Streamlining Act of 1994. Currently there is a method for tracking awards made to participants in the program established by § 8(a) but no such data element exists for socially and disadvantaged small businesses that are not participants in the § 8(a) program.

Section 314. Resubmission of Disaster Loan Applications for Businesses Affected by September 11, 2001, Terrorist Attacks

As a result of terrorist attacks of September 11, 2001, many small businesses located in the declared disaster areas were taken over for use by federal, state, and local authorities. Other businesses, particularly those related to aviation, were prohibited from operating as a result of federal edicts. For example, flight schools located at an airfield in Farmingdale, NY were not prohibited from operating but they could not provide their students with any flight experience. Other enterprises, such as those located at Ronald Reagan National Airport, lost business because the airport was closed for a significant period of time after the attacks. Some of these businesses received economic injury disaster loans while others did not or withdrew their applications. The Committee believes that these businesses should receive special attention.

This section authorizes the Administrator to reopen the application process to businesses that were unable to operate at a location due to closure by a government edict. Such edicts include government use of the location even if no specific written order was issued. The procedures set forth in the section are limited to those businesses that originally applied for a disaster loan, reapply within 90 days after enactment, and were closed for at least 20 days. The Committee believes that businesses closed for more than 20 days due to government action should be compensated for their loss.

Businesses that suffered closure contacted the Committee when they were unable to obtain disaster loans. The Committee is concerned that the Administrator, in order to protect the federal fisc, imposed standards on disaster loan applications that undermined the rationale for the disaster loan program. As a result, the Committee took the unusual action of dictating the minimum financial standards under which a disaster loan would issue. The standards

[128] The FFIEC is made up of all the federal banking regulators.

[129] Because the Committee requires a federal agency to perform the study, the Committee does not expect and would strongly object to the application of OMB Circular A–76 (requiring contracting officers to compete federal employees against private business) to the contract.

represent an appropriate compromise between assisting businesses in recovering from a disaster and protecting the federal government against default. Given the difficult operating circumstances of businesses closed for more than 20 days as a result of government action, the Committee also believes that it was appropriate to exclude tax liens from the ability to repay. The Committee is not surprised that a business whose income has dropped dramatically might make some effort to pay salaries to loyal employees during a difficult time rather than the pay taxes to the federal government. Of course, the Committee expects that any business receiving disaster assistance under this provision will immediately work out a repayment plan for all taxes owed to any government.

The disaster loan program is designed to assist businesses recover that, in turn, will help communities recover. By being overly strict in issuing disaster loans, the Administrator hinders recovery. Thus, subsection (c) requires the Administrator to resolve any reasonable doubt of likelihood of repayment in favor of the applicant.

Section 315. National Small Business Incubator Program

Numerous members of the Committee serve districts in which manufacturers are simply shutting facilities and moving production overseas. The factories and warehouses that were once vibrant signs of bustling economic activity now sit abandoned and as forlorn reminders of an industrial past. The Committee is convinced that these facilities can again play a role in boosting the American economy.

However, owners of these facilities need help. The National Small Business Incubator program represents the Committee's effort to provide that assistance. Eligible organizations, as defined in subsection (b)(8) will apply to the Administrator who will select grantees best able to develop a business incubator. Grantees selected by the Administrator will study the economic viability of rehabilitating and using abandoned factories and warehouses as small business incubators. Grants shall last for no more than 5 years because the Committee expects that the business incubators either will graduate their businesses or the incubator will fail during that period. The Committee does not intend that this program be a permanent fixture for grantees and their small business participants.

Once the factory or warehouse has been redeveloped, grantees will be required to provide the typical services associated with business incubators as outlined in subsection (b)(4). Although child-care services are not necessarily provided in business incubators, the Committee recognizes the utility of doing so and authorizes the grantees to use grant funds for that purpose. The Committee also requires grantees to identify financial institutions that are willing to provide loans using low-documentation forms and streamlined approval procedures. Grantees are required to obtain matching funds from non-federal sources and the Committee intends that those funds not include any fees charged by the grantee to a participating business.

Grantees will be required to ensure that businesses operating in the incubator participate in the training that the grantee is required to provide. Absent this requirement, the Committee is convinced that the businesses, once they leave the incubator, will not

have the technical acumen 97 necessary to maintain business operations. Thus, the Committee expects that grantees will select businesses willing to go through a training program.

In addition to the normal features of an incubator, the Committee also established certain special rules for loans made by the Administrator to businesses participating in the incubator program. These include modifications to make it easier for small business incubator participants to obtain financing through the loan program authorized by 7(a) of the SBA. Given the small number of participating businesses, the Committee does not expect that the increased participation by the Administrator and reduction in fees will adversely affect the subsidy rate.

Section 316. Report Regarding Sale of Disaster Loans on Borrowers

The Committee has received numerous complaints about the sale of disaster loans as already noted elsewhere in this report. No study or data exist on the impact of disaster loan sales on small businesses. This section requires the Chief Counsel for Advocacy to study the impact of disaster loan sales on small businesses. The Committee is particularly interested in an assessment of the loan sales on the ability of small businesses to assist communities in recovering from disasters.

The Committee selected the Office of the Chief Counsel for Advocacy to perform the study due to expertise of that Office in evaluating the economic consequences on small business of government action. Although the Office is most noted for studying the effects of regulation on small businesses, Congress directed the Chief Counsel to "assess the effectives of existing Federal subsidy and assistance programs for small business," 15 U.S.C. 634b(2), and "make such other as may be appropriate to assist the development and strengthening of * * * other small business enterprises." Id. at 634b(8). Given this mandate, the Committee believes that it is appropriate for the Chief Counsel to conduct the study and report to Congress.

Section 317. Suspension and Extension of Certain Disaster Loans Related to the Terrorist Attacks of September 11, 2001

As a result of the terrorist attacks of September 11, 2001, the Administrator provided disaster loans to many small businesses located in the original disaster areas. Many of these businesses have not financially recovered from that disaster. These businesses continue to make payments on their disaster loans but have experienced and will continue to experience difficulty in remaining current. The Administrator's further assistance is necessary to help these businesses recover. However, providing additional loans only would exacerbate an already difficult financial situation. Instead, the Committee adopted the approach that the Administrator would be required, under already existing authority pursuant to 7(b), to suspend payments on principal and interest for a minimum of two years and a maximum of five years. Suspension of payments will enable small businesses to conserve their resources, make necessary investment in their businesses, and retain employees without the threat of foreclosure by the Administrator. Prior to exercising the suspension authority, the Administrator must determine

that the business will suffer severe economic hardship as set forth in 7(b)(3) without suspension of principal and interest payments.

CONGRESSIONAL BUDGET OFFICE LETTER AND COST ESTIMATE

Pursuant to the Congressional Budget Act of 1974, the Committee estimates the Small Business Reauthorization and Manufacturing Revitalization Act of 2003 will cost $4.8 billion over the period 2004–2008.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 21, 2003.

Hon. DONALD MANZULLO,
Chairman, Committee on Small Business,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2802, the Small Business Reauthorization and Manufacturing Revitalization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa Zimmerman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

H.R. 2802—Small Business Reauthorization and Manufacturing Revitalization Act of 2003

Summary: H.R. 2802 would authorize appropriations for fiscal year 2004 and subsequent years for operations of the Small Business Administration (SBA) and would make a number of amendments to SBA loan programs that support entrepreneurship.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2802 would cost about $4.8 billion over the 2004–2008 period. About $2.9 billion of this amount is the estimated subsidy and administrative cost of continuing SBA credit programs, and $1.9 billion would be for noncredit SBA programs and activities. In addition, CBO estimates that enacting this bill would increase direct spending by $310 million in 2004 for the cost of modifying existing loans and loan guarantees. Enacting the bill would have no significant effect on revenues.

H.R. 2802 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). Any costs incurred by state, local, or tribal governments would be the result of complying with federal grant conditions. The bill would authorize $7 million per year for 2004 through 2006 for temporary assistance to Indian tribe members, Native Alaskans, and Native Hawaiians.

Major Provisions: Title I would reduce the amounts authorized to be appropriated for the New Markets Venture Capital program over the 2004–2006 period, amend the loss-reserve requirement under the Premier Certified Lenders Program, and make other changes to the Small Business Investment Act. This title also would amend the terms of existing and future loan guarantees issued under the Small Business Investment Company program.

Title II would set the maximum amounts of small business loam that could be guaranteed by SBA in 2004 and 2005 and would au-

thorize the appropriation of funds for the Service Corps of Retired Executives (SCORE) and the Active Corps of Manufacturing Executives (ACME), the Paul D. Coverdell drug-free workplace program, the women's business center program, the HUBZone program, and grants under the microloan program. Title II also would authorize the appropriation of such sums as may be necessary for the disaster loan program and for administrative expenses to carry out the Small Business Act and the Small Business Investment Act. In addition, title II would authorize such sums as may be necessary to carry out the Small Business Act and the Small Business Investment Act for all fiscal years beyond 2005. Finally, it would require SBA to reduce the initial fees paid by prospective borrowers under the 7(a) loan program starting in 2005.

Title III would call for a plan to reorganize SBA and would authorize appropriations for small business development centers for temporary assistance to Indian tribe members, Native Alaskans, and Native Hawaiians. It also would authorize funding for vocational and technical entrepreneurship development and grants for the National Small Business Incubator Program. Finally, title III would amend the terms of existing direct loans made to certain small businesses after September 11, 2001.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2802 is shown in Table 1. The costs of this legislation fall primarily within budget function 370 (commerce and housing credit).

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in the fall of 2003 and that the necessary amounts will be appropriated near the start of each fiscal year. Outlay estimates are based on historical spending rates for existing or similar programs. CBO estimates that implementing H.R. 2802 would cost $4.8 billion over the 2004–2008 period. We also estimate that enacting the bill would increase direct spending by $310 million in 2004.

Spending subject to appropriation

The bill would reauthorize most of the programs administered by SBA for 2004 and subsequent years. Based on information from SBA and historical spending patterns for the agency's programs, CBO estimates that implementing those provisions would cost $4.8 billion (including about $2.9 billion for loan programs) over the 2004–2008 period.

TABLE 1.—BUDGETARY IMPACT OF H.R. 2802

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
SBA Spending Under Current Law:						
Budget Authority [1]	765	0	0	0	0	0
Estimated Outlays	917	225	67	11	4	0
Changes to SBA Loan Programs:						
Estimated Authorization Level	0	739	669	685	707	765
Estimated Outlays	0	363	578	608	661	708
Changes to Noncredit Programs:						
Estimated Authorization Level	0	494	515	527	541	555
Estimated Outlays	0	172	310	439	484	519

TABLE 1.—BUDGETARY IMPACT OF H.R. 2802—Continued

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
Total Changes:						
Estimated Authorization Level	0	1,233	1,184	1,212	1,248	1,320
Estimated Outlays	0	535	889	1,046	1,145	1,227
SBA Spending Under H.R. 2802:						
Estimated Authorization Level [1]	765	1,233	1,184	1,212	1,248	1,320
Estimated Outlays	917	760	956	1,057	1,149	1,227
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	310	0	0	0	0
Estimated Outlays	0	310	0	0	0	0

[1] The 2003 level is the amount appropriated for SBA operations for that year. A full-year appropriation for 2004 has not yet been provided.

Authorizations to Continue Loan Programs. The bill would authorize SBA to guarantee loans and make direct loans to businesses worth up to $28 billion in 2004, $30 billion in 2005, $31 billion in 2006, $31 billion in 2007, and $32 billion in 2008. By comparison, the authorized loan level for 2003 is $29 billion, and in 2002, the agency's direct and guaranteed loans were worth about $15 billion. H.R. 2802 would authorize the agency to make an indefinite amount of disaster loans over the 2004–2006 period. Table 2 shows the loan levels that would be authorized by the bill for SBA's guaranteed and direct business loans and CBO's estimate of the amounts of disaster loans, as well as the estimated subsidy cost and administrative expenses for those loans.

TABLE 2.—ESTIMATED SBA LOAN LEVELS, SUBSIDY COSTS, AND ADMINISTRATIVE COSTS UNDER H.R. 2802

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Authorized Loan Levels					
Guaranteed and Direct Business Loans	27,938	29,843	30,589	31,353	32,137
Disaster Loans [1]	815	815	815	815	815
Loan Subsidy Costs					
Guaranteed and Direct Business Loans:					
Estimated Authorization Level	392	315	323	331	339
Estimated Outlays	140	254	255	295	323
Disaster Loans:					
Estimated Authorization Level	114	114	114	114	114
Estimated Outlays	57	103	114	114	114
Loan Administration Costs					
Guaranteed and Direct Business Loans:					
Estimated Authorization Level	132	136	141	145	150
Estimated Outlays	94	126	135	141	145
Disaster Loans:					
Estimated Authorization Level	101	104	107	117	132
Estimated Outlays	72	96	103	112	125

[1] These are estimated loan levels, based on the historical experience of SBA's Disaster Loan Program.

The Federal Credit Reform Act of 1990 requires an appropriation of the subsidy costs and administrative costs associated with loan guarantees and direct-loan program operations. (The subsidy cost is the estimated long-term cost to the government of a direct loan or loan guarantee, calculated on a net-present-value basis, excluding administrative costs.) The bill does not specify an explicit au-

thorization for either the subsidy or administrative costs for the guaranteed, direct, or disaster loans, and CBO estimated these amounts based on historical information about the operation of those programs.

The estimated subsidy rates for the different types of business loans and loan guarantees offered by SBA ranges from zero to about 9 percent. Based on historical data for those loan programs and incorporating program changes required by this bill, CBO estimates that the subsidy costs for the authorized levels of guaranteed and direct business loans would be $100 million in 2004 and $514 million over the 2004–2008 period.

Based on the current administrative costs for SBA's loan programs, CBO estimates that the administrative costs for the business loan programs would be $94 million in fiscal year 2004 and $641 million over the 2004–2008 period.

For this estimate, CBO assumes that demand for SBA's disaster loans would be near the average historical rate for the past four years, excluding loans authorized to be made by the Small Business Investment Company Amendments Act of 2001 immediately following the terrorist attacks of September 11, 2001. Over the last four years, loan volume for the regular disaster loan program has ranged from about $760 million to $870 million. We estimate that SBA would make disaster loans worth $815 million a year over the 2004–2008 period. The estimated subsidy rate for disaster loans is about 14 percent, based on the historical performance of those loans. At that rate, the subsidy cost for the anticipated volume of disaster loans would be $114 million a year. CBO estimates that the administrative costs for the disaster loan program would be $72 million in 2004 and $508 million over the 2004–2008 period.

Cost of 7(a) Loans. Two provisions in H.R. 2802 would affect the subsidy rate for loan guarantees under SBA's 7(a) program. First, the bill would change the fee rate for 7(a) loans starting in 2005. Second, it would increase the percentage of these loans that SBA guarantees for small businesses located in rural areas. In total, the bill would authorize loan guarantees for SBA's 7(a) program of $16 billion in 2004 and $84.5 billion over the 2004–2008 period. These amounts are included in the total authorizations for guaranteed and direct business loans discussed in the previous section. CBO estimates that implementing H.R. 2802 would result in subsidy costs for the 7(a) program of $166 million in 2004 and $451 million over the 2004–2008 period.

Changes in Fees for 7(a) Loans. In 2003, the subsidy rate for SBA's 7(a) program was about 1 percent. Based on information provided by SBA, CBO estimates that the subsidy rate for 2004 also would be 1 percent and that, beginning in 2005, the subsidy rate would be 0.4 percent. The estimated change for the 2005 subsidy rate reflects changes in the fee rates for the 7(a) program included in section 207 of the bill. Under current law, both the initial upfront and annual fees that borrowers pay to obtain these loans, are set to increase beginning in 2005. H.R. 2802 would maintain the upfront fee rate at the 2004 level. Based on information provided by the Administration, CBO assumes that the changes in fee rates would only apply to loans made in 2005 and subsequent years.

7(a) Loans to Rural Small Businesses. Under the current 7(a) program, SBA guarantees 85 percent of loans under $150,000 and

75 percent of loans over $150,000. Section 207 would increase the guarantee to 90 percent for certain small businesses located in rural areas. Based on information provided by SBA's Office of Advocacy, CBO estimates that 20 percent of 7(a) loans are made to small businesses in rural areas. Under H.R. 2802, that amount would be $2.3 billion in 2004 and about $17 billion over the 2004–2008 period—out of the total authorized loan level ($84.5 billion) for the 7(a) program. Based on information provided by SBA, CBO estimates that the subsidy rate for loans made to small businesses located in rural areas would be about 1.2 percent in 2004 and about 0.5 percent starting in 2005. The change in the subsidy rate between 2004 and 2005 is attributable to the proposed change in 7(a) fees that would begin in 2005 under the bill.

Cost of Small Business Investment Company (SBIC) Loan Guarantees. SBA guarantees 10-year loans made to venture capital firms, or Small Business Investment Companies. Under current law, if an SBIC exhibits certain financial conditions, SBA can intervene into the operations of the SBIC. One condition that merits intervention is "capital impairment," which SBA defines using a numerical measure of financial viability. If an SBIC becomes capitally impaired, SBA can prevent the SBIC from making further investments and stop the SBIC from making further draw downs of leverage. According to SBA, these actions provide the agency a means to limit its exposure to risk.

Under section 107 of the bill, SBA would no longer have the ability to intervene in the operations of an SBIC because of capital impairment. SBA currently estimates that the SBIC program operates at no net cost. CBO expects that the bill's prohibition of intervention for capital impairment would lead to fewer recoveries on defaulted loans relative to current law. Furthermore, we expect that SBA would receive most loan recoveries at the end of the loan term because they would not be permitted to intervene with SBICs earlier as they do under current law.

Based on information provided by SBA, CBO estimates that the; subsidy rate associated with the SBIC program would increase to about 4 percent for loans made after enactment of the bill. Of the total amount authorized for loans under H.R. 2802, $5 billion in 2004 and about $28 billion over the 2004–2008 period would be for the participating securities portion of SBA's SBIC program. CBO estimates that the subsidy cost for these loans would be $40 million in 2004 and $750 million over the 2004–2008 period. (We also estimate that this provision would affect existing loan guarantees. The cost of that loan modification is discussed below under the "Direct Spending and Revenues" section.)

Interest Rate on Microloans. Under current law, SBA microloans of $7,500 or less are eligible to receive an interest rate reduction of 75 basis points below the interest rate for direct loans in the microloan program. Section 207 would increase the maximum loan amount eligible for the interest rate reduction to $10,000. Because more loans could receive a lower interest rate under the bill, CBO expects that this provision would lead to a minor increase in the subsidy rate for the microloan program. Because of the small volume of such loans, however, we estimate that the increased cost of this provision would be less than $500,000 a year.

National Small Business Incubator Program (NSBIP) Loans. Section 315 would authorize guaranteed loans to small businesses that receive grants under NSBIP. These loans would be guaranteed following the structure of SBA's 7(a) program but would have lower initial fees and annual fees. Also, interest rates on NSBIP loans would be capped at 4 percent while interest rates on 7(a) loans are capped at the prime rate plus a certain fixed percentage, depending on the size and length of maturity of the loan.

CBO estimates that the total program level for NSBIP guaranteed loans would be no larger than $10 million over the 2004–2008 period. The estimated subsidy rate for fiscal year 2003 for the 7(a) program is about 1 percent. CBO expects that the lower fees and lower interest rate cap for loans guaranteed under the NSBIP would result in a larger subsidy rate compared to the 7(a) subsidy rate. However, because loans under this new program would be limited to $10 million in total over the 2004–2008 period, CBO expects that subsidy costs associated with the new loans would be less than $500,000 a year over that period.

Compensation for the Fiscal Transfer Agent in the 7(a) Secondary Market. Under current law, SBA contracts with a Fiscal Transfer Agent (FTA) to operate a secondary market for guaranteed portions of 7(a) loans. As part of its services, the FTA collects fees on behalf of SBA from borrowers and lenders participating in the 7(a) program and also collects principle and interest from borrowers and holds it in the Master Reserve Fund until payments are due to investors.

Two provisions of section 207 would give SBA specific authority to compensate the FTA by allowing it to retain the float (short-term) interest on those fees and on transfers in and out of the Master Reserve Fund. While current law does not give SBA specific authority to do so, SBA's existing contract with the FTA allows for compensation to the FTA in this manner. According to a January 2003 report issued by SBA's Office of the Inspector General, the FTA earned revenues of about $250,000 each year of float interest on fees due to SBA and about $4 million each year of float interest on fund transfers with the Master Reserve Fund during 2000 and 2001.

Although SBA could opt to change the terms of the contract with the FTA in the future, the SBA's mechanism for compensating the FTA under H.R. 2802 would be identical to its current operation. Because section 207 would codify how SBA currently compensates the FTA, CBO estimates this provision would have no effect on federal spending.

SBA's Noncredit Programs. The bill also would authorize the appropriation of funds for noncredit programs that support small businesses and other SBA activities. Most of those activities are conducted under current law. CBO estimates that continuing those activities would cost $1.9 billion over the 2004–2008 period.

CBO estimates that $944 million of that cost would be for SBDCs, SCORE, ACME, NCBIP, technical assistance for recipients of SBA microloans, the women's business center program, the drug-free workplace program, the HUBZone program, the Business Learning Information Networking Collaboration (BusinessLINC) program, government contract and business development assistance, and temporary assistance to Indian tribe members, Native

Alaskans, and Native Hawaiians, along with vocational and technical ertrepreneurship development for 2004–2008.

The bill also would authorize the appropriation of such sums as may be necessary for other activities that SBA conducts for 2004 and beyond. To estimate those amounts, CBO adjusted spending provided in 2003 for anticipated inflation over the next five years. We estimate the total cost of continuing those programs would be $1 billion over the 2004–2008 period.

Direct spending revenues

CBO estimates that enacting H.R. 2802 would increase direct spending by $310 million in 2004 for modifications to certain loans made after September '! 1, 2001, and for outstanding loans to SBICs. The bill also would affect direct spending by modifying Certified Development Company (CDC) loans, but CBO estimates that these costs would not be significant. Finally, the bill would affect revenues by authorizing SBA to collect civil penalties for certain activities, but those effects would also be insignificant.

Modification of SBIC Loan Guarantees. By restricting the ability of SBA to control the operations of SBICs with capital impairment, the bill would postpone anticipated defaults until the end of the 10-year loan term and would reduce expected recoveries on such defaults. Under section 107, SBA would no longer have the ability to intervene in the operations of an SBIC because of capital impairment of the SBIC. Within the SBIC program, there are currently $3.8 billion in participating securities and $1.6 billion in debentures outstanding. SBA estimates that the SBIC program currently operates at no cost because program costs are currently offset by fees collected by SBA. Based on information from SBA, CBO expects that the value of recoveries on defaulted loans would decrease by about one-half.

Because section 107 would affect previous loan cohorts, enacting H.R. 2802 would necessitate a loan modification under the Federal Credit Reform Act. The cost of a loan modification is the change in the subsidy cost of the loan (on a present-value basis) because of the modified loan terms. Based on information provided by SBA, CBO estimates that the modification of SBIC loan guarantees would increase direct spending by about $300 million in 2004, when we assume the legislation will be enacted. That estimate is only for the cost of modifying the loan terms for the participating securities in the SBIC program. CBO has insufficient information at this time to estimate the added cost of modifying the terms of debentures under this program.

Loan Modification for Disaster Loans. Following the terrorist attacks of September 11, 2001, Public Law 107–117 authorized SBA to make disaster loans to small businesses located in designated disaster areas near northern Virginia and New York City. Payments of principal and interest on these loans were deferred for two years, and during that time, interest did not accrue on the loans. According to SBA, the total value of these loans is about $580 million.

Section 317 of the bill would authorize SBA to defer payments of principal and interest on certain qualified loan recipients for an additional two to five years. Interest would accrue during this time period, and the life of the loan would be extended. Qualified appli-

cants would have to show that making principal and interest payments would cause economic injury to the small business. Based on information provided by SBA, CBO estimates that about one-third of loan volume would be modified under section 317.

Under the Federal Credit Reform Act, the cost of a loan modification is the change in the subsidy cost of the loan (on a present-value basis) because of the modified loan terms. Based on information provided by SBA, CBO assumes that the average interest rate on these loans is about 3.6 percent. Because CBO projects interest rates for Treasury borrowing (on debt of comparable maturity) higher than 3.6 percent, the provision would have a cost on a present-value basis. CBO estimates that this provision would cost $10 million, which would be recorded in 2004, when we assume the legislation will be enacted.

Premier Certified Lenders Program. CDC loans, also known as section 503 and 504 loans, provide small businesses with long-term, fixed-rate financing for the purchase of land, buildings, and equipment. The Premier Certified Lenders Program allows a participating CDC the authority to review and approve loan requests and to foreclose, litigate, and liquidate loans made under the program. Under current law, CDCs can qualify as Premier Certified Lenders (PCLs) if, among other requirements, they agree to pay 10 percent of SBA's potential loss on a defaulted 504 loan. A PCL must hold 10 percent of this potential loss (i.e., 1 percent of the total loan) in a reserve for the life of the loan.

Section 126 would have two effects on the requirements for loss reserves under the PCL Program. First, the provisions would change the loss-reserve requirement from 1 percent of the total value of the loan to 1 percent of the total loan outstanding. PCLs would be allowed to withdraw any funds from their loss reserves in excess of this amount. Second, certain PCLs would have the option to maintain an alternate loss-reserve level based on risk rather than a fixed percentage. The amount of the reserve would be determined by an independent, SBA-approved auditor. Under the two provisions, if a PCL chooses this option, it must pay 15 percent of SBA's total loss on defaulted CDC loans.

Under current law, the Administrator of SBA must adjust an annual fee on CDC loans to produce an estimated subsidy rate of zero at the time the loans are guaranteed. Enacting section 126 could affect the subsidy rates for previous cohorts of CDC loans. Decreasing the loss-reserve requirement for PCLs would cause SBA to collect a smaller amount of recoveries if a small business defaults on a loan and a PCL is unable to pay its portion of SBA's total loss. However, increasing the required loss coverage to 15 percent for PCLs that opt to maintain a loss-reserve level based on risk would increase SBA's recoveries on defaulted CDC loans. It is unclear if, taken together, those two effects would increase or decrease the average subsidy costs for previous CDC loans. However, CBO estimates that those two effects would not have a significant net impact on direct spending.

Civil Penalties. Section 214 of the bill would authorize SBA to impose civil penalties on small business lending companies and SBA lenders that are not federally regulated. Such penalties are recorded in the budget as revenues. CBO expects that any increase

in civil penalties resulting from the enactment of H.R. 2802 would be insignificant.

Intergovernmental and private-sector Impact: H.R. 2802 contains no intergovernmental or private-sector mandates as defined by UMRA. Implementing the bill would benefit tribal governments. Title III would authorize $7 million per year for 2004 through 2006 for temporary assistance to Indian tribe members, Native Alaskans, and Native Hawaiians.

Previous CBO Estimates: On August 1, 2003, CBO transmitted a cost estimate for S. 1375, the Small Business Administration 50th Anniversary Reauthorization Act of 2003, as ordered reported by the Senate Committee on Small Business on July 10, 2003. H.R. 2802 and S. 1375 have different authorization levels and different authorization periods. Our cost estimates reflect those differences.

On June 5, 2003, CBO transmitted a cost estimate for H.R. 923, the Premier Certified Lenders Program Improvement Act of 2003, as ordered reported by the House Committee on Small Business and Entrepreneurship on May 22, 2003. Provisions of that bill are similar to section 126 of H.R. 2802, and the estimated costs for those provisions are the same.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman, Julie Middleton, and Matthew Pickford; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform with respect to the subject matter contained in H.R. 2802.

In accordance with clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 2802 are incorporated into the descriptive portions of this report.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18 and Article III, Sections 1 and 2 of the Constitution of the United States.

UNFUNDED MANDATES

H.R. 2802 contains no unfunded mandates.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2802 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of Pub. L. No. 104–1.

FEDERAL ADVISORY COMMITTEE STATEMENT

This legislation does not authorize the establishment of any new advisory committees.

STATEMENT OF WAIVER OF JURISDICTION BY COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 5, 2003.

Hon. DONALD MANZULLO,
Chairman, Committee on Small Business,
House of Representatives, Washington, DC.

DEAR CHAIRMAN MANZULLO: In recognition of the desire to expedite floor consideration of H.R. 2802, the "Small Business Reauthorization and Manufacturing Revitalization Act of 2003," the Committee on the Judiciary hereby waives consideration of the bill. Some of the provisions of the bill fall within the Committee on the Judiciary's Rule X jurisdiction. However, given the need to expedite this legislation, I will not seek a sequential referral based on their inclusion.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over these provisions is in no way diminished or altered. I would appreciate your including this letter and your response in your committee report and in the Congressional Record during consideration of H.R. 2802 on the House floor.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS INVESTMENT ACT OF 1958

TITLE I—SHORT TITLE, STATEMENT OF POLICY, AND DEFINITIONS

* * * * * * *

DEFINITIONS

SEC. 103. As used in this Act—

(1) * * *

* * * * * * *

[(4) 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;**]**

(4) the term "State" has the meaning given such term in section 3 of the Small Business Act;

* * * * * * *

(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; **[**and**]**

(17) the term "long term", when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year**[**.**]***; and*

(18) the term "small manufacturer" has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

* * * * * * *

TITLE III—INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

* * * * * * *

BORROWING POWER

SEC. 303. (a) * * *

(b) To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities 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. 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 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 per centum, plus, for debentures obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing debentures under this Act, which amount may not exceed 1.38 percent per year, and 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) * * *

(2) MAXIMUM LEVERAGE.—

[(A) IN GENERAL.—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—

[(i) if the company has private capital of not more than $15,000,000, the total amount of leverage shall not exceed 300 percent of private capital;

[(ii) 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 percent of the amount of private capital over $15,000,000; and

[(iii) 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 percent of the amount of private capital over $30,000,000 but not to exceed an additional $15,000,000.

[(B) ADJUSTMENTS.—

[(i) IN GENERAL.—The dollar amounts in clauses (i), (ii), and (iii) of subparagraph (A) 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) INITIAL ADJUSTMENTS.—The initial adjustments made under this subparagraph after the date of the enactment of the Small Business Reauthorization Act of 1937 shall reflect only increases from March 31, 1993.]

(A) IN GENERAL.—The outstanding leverage made available to a licensee under section 301(c) shall not exceed 300 percent of private capital, up to a maximum of $115,000,000, except that the maximum shall be $150,000,000 if the licensee certifies in writing that more than 50 percent of its aggregate dollar amount of financings are in small manufacturers.

(B) COMMONLY CONTROLLED LICENSEES.—

(i) In the case of 2 or more licensees that are commonly controlled (as determined by the Administrator), upon application to the Administrator, the outstanding leverage made available shall not exceed $150,000,000, except that the maximum shall be $185,000,000 if the licensees certify in writing that more than 50 percent of their aggregate dollar amount of financings are in small manufacturers. The Administrator shall have 10 business days to approve or disapprove an application under the preceding sentence. Approval or disapproval is final agency action for purposes of chapter 7 of title 5, United States Code.

(ii) Not later than 120 days after the enactment of this subparagraph, the Administrator shall prescribe

regulations providing standards and conditions for increases in leverage, including the standards for determining common control of licensees.

(iii) Until regulations are prescribed under clause (ii), the Administrator shall approve the application of each commonly controlled licensee under the definition of common control in section 107.50 of title 13, Code of Federal Regulations, as in effect on January 1, 2003.

* * * * * * *

[(4) 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

[(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).

[(D) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the aggregate outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.]

* * * * * * *

[(d) REQUIRED CERTIFICATIONS.—

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

(d) INVESTMENTS IN SMALLER ENTERPRISES.—As a condition of approval of an application for leverage, the Administrator shall require a licensee to certify in writing that not less than 25 percent of the licensee's aggregate dollar amount of financings will be provided to smaller enterprises.

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

(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[.]*; and*

(3) shall not, for reasons of capital impairment, restrict the operations of the licensee or direct the use of the licensee's capital to any purpose other than the purposes for which the license was granted; and

(4) notwithstanding paragraph (3), may take action to restrict the operations of, or liquidate a licensee for failure to comply with any other provision of the law or regulation promulgated pursuant to this Act.

* * * * * * *

(g) 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:

(1) * * *

(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 Administra-

tion, 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, plus, for participating securities obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing participating securities under this Act, which amount may not exceed ❚1.38 percent❚ *1.7 percent* per year, and which shall be paid to and retained by the Administration.

* * * * * * *

❚(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 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.❚

(9)(A) Subject to subparagraphs (B), (C), and (D), after making distributions under paragraph (8), a company with outstanding participating securities may distribute the balance of income to its investors, if there are no accumulated and unpaid prioritized payments.

(B) Amounts received by the Administration under this paragraph and paragraph 8 shall be applied first as prepayment of the principal amount of the outstanding participating securities or debentures of the company at the time of such distribution and then to the allocation under paragraph (11).

(C) 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 day before the distribution until the outstanding participating securities or debentures of the company are paid in full, after which any remaining distributions under this paragraph shall be made to private investors and to the Administration in the ratio that is provided for the allocation of profits in paragraph (11).

(D) The Administrator shall prescribe such regulations as are required to assure that management fees for the company are not unreasonably reduced due to a reduction in combined capital as a result of distributions made under this paragraph.

* * * * * * *

AGGREGATE LIMITATIONS

SEC. 306. (a) If 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 *(and not including any obligations or securities issued under section 7(a) of the Small Business Act or title V of this Act)* for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration.

* * * * * * *

MISCELLANEOUS

SEC. 308. (a) * * *

* * * * * * *

(c) 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. *Any rules or regulations issued under this Act, other than those relating to agency management or personnel, shall be issued pursuant to section 553(b) of title 5, United States Code.*

* * * * * * *

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

SEC. 351. DEFINITIONS.

In this part, the following definitions apply:

(1) * * *

* * * * * * *

(3) LOW-INCOME GEOGRAPHIC AREA.—the term "low-income geographic area" means—

(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

(i) the poverty rate for that census tract is not less than 20 percent;

(ii) in the case of a tract—

(I) that is located within a metropolitan area, [50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or] *the median family income in that tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income; or*

* * * * * * *

SEC. 352. PURPOSES.

The purposes of the New Markets Venture Capital Program established under this part are—

(1) * * *

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises *and small manufactures* located in low-income geographic areas, to be administered by the Administrator—

(A) * * *

* * * * * * *

SEC. 353. ESTABLISHMENT.

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 354(e) for the purposes set forth in section 352 *(with at least one such agreement to be with a company engaged primarily in development of and investment in small manufacturers)*;

* * * * * * *

SEC. 354. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

(a) * * *

* * * * * * *

(d) REQUIREMENTS TO BE MET FOR FINAL APPROVAL.—The Administrator shall grant each conditionally approved company [a period of time, not to exceed 2 years,] *2 years* to satisfy the following requirements:

(1) * * *

* * * * * * *

SEC. 358. OPERATIONAL ASSISTANCE GRANTS.

(a) IN GENERAL.—

(1) * * *

* * * * * * *

(6) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—Upon the request of a company conditionally-approved under section 354(c), the Administrator shall provide up to $50,000 in grant assistance for establishment of an operational assistance program under this title.

(7) REPAYMENT.—If a company receives a grant under paragraph (6) and does not enter into a participation agreement for final approval, the company shall repay the amount of the grant to the Administrator.

(8) DEDUCTION.—If a company receives a grant under paragraph (6) and receives final approval under section 354(e), the Administrator shall deduct the amount of the grant under that paragraph from the total grant amount that the company receives for operational assistance.

* * * * * * *

SEC. 368. AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for [fiscal years 2001 through 2006] *fiscal years 2004 and 2005*, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee [$150,000,000] *$75,000,000* of debentures under this part.

(2) [$30,000,000] *$15,000,000* to make grants under this part.

* * * * * * *

TITLE IV—GUARANTEES

PART A—LEASE GUARANTEES

AUTHORITY OF THE ADMINISTRATION

[SEC. 401. (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. 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) 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, 2½

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 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;

[(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, as the Administrator may in his discretion require.

[POWERS

[SEC. 402. Without limiting the authority conferred upon the Administrator and the Administration by section 201 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.

[POLLUTION CONTROL

[SEC. 404. (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, al-

tering, 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.

[(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.

[(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.

[(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 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 issued 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, 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 amount be less than 1 per centum or more than 3½ 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.

[(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 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.]

* * * * * * *

TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

STATE DEVELOPMENT COMPANIES

SEC. 501. (a) 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] *purposes of this title are to foster economic development and create or preserve job opportunities in both urban and rural areas, and to enhance the ability of America's small manufacturers to expand* by providing long-term financing for small business concerns through the development company program authorized by this title.

* * * * * * *

(d) 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) * * *

(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, *increasing the productive capacity of small manufacturers,* 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) * * *

* * * * * * *

[(D) rural development,]

(D) development in a community with a population of less than 50,000 that is not located within a standard metropolitan statistical area,

* * * * * * *

(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.]

(e)(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every $50,000 guaranteed by the Administration, except that the amount is $100,000 in the case of a project of a small manufacturer.

(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every $50,000 guaranteed by the Administration.

(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than $75,000 per job created or retained.

(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

(5) Under regulations prescribed by the Administrator, the Administrator may waive any requirement of this subsection (other than paragraph (4)).

(f) DEVELOPMENT COMPANY AFFILIATES.—

(1) IN GENERAL.—The Administrator shall permit a qualified State development company under this section and section and 502 to affiliate with a lender authorized to make loans under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) if—

(A) the affiliate is a qualified State development company under this section or section 502;

(B) the affiliate is chartered by a special Act of the State legislature for purposes of economic development and job creation through investment of public and private capital, without regard to any return on the expected capital; or

(C) the affiliate is a business development company chartered by the State with the primary purpose of economic development through small business financing programs.

(2) SPECIAL RULE.—An affiliate that meets a criterion under subparagraph (A), (B), or (C) of paragraph (1) is not required to have a full-time manager if the qualified State development company has management in common with the affiliate.

LOANS FOR PLANT ACQUISITION, CONSTRUCTION, CONVERSION, AND EXPANSION

SEC. 502. The Administration may, in addition to its authority under section 501, make loans for plant acquisition, 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) * * *

(2) Loans made by the Administration under this section shall be limited to ⟦$1,000,000⟧ *$2,000,000* for each such identifiable small business concern, except loans meeting the criteria specified in section 501(d)(3), which shall be limited to ⟦$1,300,000⟧ *$2,500,000* for each such identifiable small business concern *and loans to small manufacturers shall be limited to $4,000,000 and loans under this section shall not be limited by reason of any loan guaranteed by the Administration under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).*

* * * * * * *

DEVELOPMENT COMPANY DEBENTURES

SEC. 503. (a) * * *

(b) No guarantee may be made with respect to any debenture under subsection (a) unless—

(1) * * *

* * * * * * *

⟦(6) the Administration approves each loan to be made from such proceeds; and⟧

(6) except as provided in section 508, the Administration approves each loan to be made from such proceeds in accordance with section 512, (but such approval shall not require a small business investment company licensed under title III of this Act to guarantee a loan without regard to its ownership percentage of the borrower); and

* * * * * * *

(c)(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from ⟦certified⟧ *qualified State or local* development companies to small business concerns.

* * * * * * *

(e)(1) * * *

(2) 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] *qualified State or local* development company which has such staff and management ability and which is located in the same general area to provide such services.

(f) EFFECTIVE DATE.—The fees authorized by subsections (b) and (d) 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, [2003] *2005*.

* * * * * * *

SEC. 507. ACCREDITED LENDERS PROGRAM.

(a) * * *

(b) REQUIREMENTS.—The Administration may designate a qualified State or local development company as an accredited lender if such company—

(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; *and*

[(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 financing plant and equipment through the Development Company Program.]

(2) has a loan default rate, as determined by the Bureau of Premier Certified Lenders Program Oversight, that is—

(A) less than the national average;

(B) one percent higher than the national average, if at least 20 percent of the development company's portfolio is for projects in areas referred to in section 501(e)(3); or

(C) two percent higher than the national average, if at least 30 percent of the development company's portfolio is for projects of small manufacturers.

[(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.] *that the develop-*

ment company has not continued to meet the requirements of subsection (b).

* * * * * * *

[SEC. 508. PREMIER CERTIFIED LENDERS PROGRAM.

[(a) ESTABLISHMENT.—The Administration may establish a Premier Certified Lenders Program for 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 lender—

[(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

[(D) 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) 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) 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).

[(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) SALE OF CERTAIN DEFAULTED LOANS.—

[(1) NOTICE.—If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

[(2) LIMITATIONS.—The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

[(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

[(B) provides the notice required by paragraph (1).

[(e) 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 des-

ignated as a premier certified lender under this section 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 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.

[(f) REVIEW.—After the issuance and sale of debentures under this section, the Administration, at intervals not 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 (g), but such review shall not affect any outstanding debenture guarantee.

[(g) SUSPENSION OR REVOCATION.—The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administration determines that the company—

[(1) has not continued to meet the criteria for eligibility under subsection (b);

[(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.

[(h) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

[(i) 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 50 percent of the loan applications for assistance under section 504 pursuant to the program authorized under this section.

[(j) 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—

[(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. 508. PREMIER CERTIFIED LENDERS PROGRAM.

(a) ESTABLISHMENT.—The Administrator may establish a Premier Certified Lenders Program for qualified State and local 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 qualified State and local development company shall prepare and submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

(2) DESIGNATION.—The Administrator may designate a qualified State and local development company as a premier certified lender—

(A) if the company is an active qualified State and local 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 Administrator 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 Administrator 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 Administrator under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company); and

(D) the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3) APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Administrator may revoke the designation of a qualified State and local development company as a premier certified lender under this section at any time, if the Administrator determines that the qualified State and local development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c) 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).

(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 Administrator;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administrator; 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 Administrator 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 Administrator shall allow the qualified State and local development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7) ALTERNATIVE LOSS RESERVE.—

(A) ELECTION.—With respect to any eligible calendar quarter, a qualified high loss reserve premier certified lender may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for that quarter.

(B) CONTRIBUTIONS.—

(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve premier certified lender that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during that quarter.

(ii) BASED ON LOSS.—A qualified high loss reserve premier certified lender that makes the election described in subparagraph (A) with respect to a calendar quarter shall, before the last day of that quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the lender—

(I) is not less than $100,000; and

(II) is sufficient, as determined by a qualified independent auditor, for the lender to meet its obligations to protect the Government from risk of loss.

(iii) CERTIFICATION.—Before the end of a calendar quarter for which an election is in effect under subparagraph (A), the head of the premier certified lender shall submit to the Administrator a certification that the loss reserve of the lender is sufficient to meet the lender's obligation to protect the Government from risk of loss. The certification shall be submitted in such form and manner as the Administrator may require and shall be signed by the head of the lender and by the auditor making the determination under clause (ii)(II).

(C) DISBURSEMENTS.—

(i) ORDINARY RULE INAPPLICABLE.—Paragraph (6) shall not apply with respect to any qualified high loss reserve premier certified lender for any calendar quarter for which an election is in effect under subparagraph (A).

(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administrator shall allow the qualified high loss reserve premier certified lender to withdraw from its loss reserve the excess of—

(I) the amount of the loss reserve, over

(II) the greater of $100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the lender's obligation to protect the Government from risk of loss.

(D) RECONTRIBUTION.—If the requirements of this paragraph apply to a qualified high loss reserve premier certified lender for a calendar quarter and cease to apply to that lender for any subsequent calendar quarter, the lender shall make a contribution to its loss reserve in such amount as the Administrator may require, except that the amount shall not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in the loss reserve had this paragraph never applied to the lender. The Administrator may require that the contribution be made as a single payment or as a series of payments.

(E) RISK MANAGEMENT.—If a qualified high loss reserve premier certified lender fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and the failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to the lender as of the end of the 180-day period and the lender shall make the contribution described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

(F) QUALIFIED HIGH LOSS RESERVE PREMIER CERTIFIED LENDER.—The term "qualified high loss reserve premier certified lender" means, with respect to a calendar year, a pre-

mier certified lender so designated by the Administrator for that year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

(i) the amount of the loss reserve of the company is not less than $100,000;

(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of Premier Certified Lenders Program loans and for grading each Premier Certified Lenders Program loan made by the company on the basis of the risk of loss associated with such loan; and

(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administrator has issued a waiver with respect to the requirement of this clause.

(G) SPECIFIED RISK MANAGEMENT BENCHMARKS.—For purposes of this paragraph, the term "specified risk management benchmarks" means the following rates, as determined by the Administrator:

(i) Currency rate.

(ii) Delinquency rate.

(iii) Default rate.

(iv) Liquidation rate.

(v) Loss rate.

(H) QUALIFIED INDEPENDENT AUDITOR.—For purpose of this paragraph, the term "qualified independent auditor" means an auditor who—

(i) is compensated by the qualified high loss reserve premier certified lender;

(ii) is independent of the lender; and

(iii) has been approved by the Administrator during the preceding year.

(I) PREMIER CERTIFIED LENDERS PROGRAM LOAN.—For purposes of this paragraph, the term "Premier Certified Lenders Program loan" means a loan guaranteed under this section.

(J) ELIGIBLE CALENDAR QUARTER.—For purposes of this paragraph, the term "eligible calendar quarter" means—

(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph; and

(ii) the 7 succeeding calendar quarters.

(K) REGULATIONS.—Not later than 60 days after the date of the enactment of this paragraph, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

(i) the approval of auditors under subparagraph (H); and

(ii) the designation of qualified high loss reserve premier certified lenders under subparagraph (F), including the determination of whether a process for ana-

lyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

(8) BUREAU OF PREMIER CERTIFIED LENDERS PROGRAM OVERSIGHT.—

(A) ESTABLISHMENT.—There is hereby established in the Administration a bureau to be known as the Bureau of Premier Certified Lenders Program Oversight, within the Office of Lender Oversight established pursuant to section 6 of the Small Business Act.

(B) PURPOSE.—The Bureau shall carry out such functions under this subsection as the Administrator may designate. The functions of the Bureau under the preceding sentence may not be delegated to a district director or any other employee assigned to a district office or regional office established by the Administrator under section 4 of the Small Business Act (15 U.S.C. 633).

(C) DEADLINE.—Not later than 90 days after the date of the enactment of this paragraph—

(i) the Administrator shall ensure that the Bureau is prepared to carry out the functions designated under subparagraph (B), and

(ii) the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau to carry out such functions.

(D) If the Administrator does not comply with subparagraph (C)(i), the certifications required under this section shall be deemed approved until the date of compliance. Certifications so deemed approved shall continue in effect notwithstanding any later compliance with that subparagraph.

(d) SALE OF CERTAIN DEFAULTED LOANS.—

(1) NOTICE.—If, upon default in repayment, the Administrator acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any qualified State and local development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administrator first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) LIMITATIONS.—The Administrator shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

(A) provides prospective purchasers with the opportunity to examine the Administrator's records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(e) LOAN APPROVAL AUTHORITY.—

(1) IN GENERAL.—Notwithstanding section 503(b)(6), and subject to such terms and conditions as the Administrator may establish, the Administrator may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administrator may monitor the conduct of any such litigation to which

a premier certified lender is a party), and liquidate 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 Administrator 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.

(f) REVIEW.—After the issuance and sale of debentures under this section, the Administrator, at intervals not 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 Administrator shall consider the findings of the review in carrying out its responsibilities under subsection (g), but such review shall not affect any outstanding debenture guarantee.

(g) SUSPENSION OR REVOCATION.—The designation of a qualified State and local development company as a premier certified lender may be suspended or revoked if the Administrator determines that the company—

(1) has not continued to meet the criteria for eligibility under subsection (b);

(2) has not established or maintained the loss reserve required under subsection (c);

(3) is failing to adhere to the Administrator's rules and regulations; or

(4) is violating any other applicable provision of law.

(h) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

(i) PROGRAM GOALS.—Each qualified State and local development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 504 pursuant to the program authorized under this section.

(j) REPORT.—The Administrator shall annually report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the implementation of this section. Each report shall include—

(1) the number of qualified State and local 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 Administrator deems appropriate.

* * * * * * *

SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.

(a) DELEGATION OF AUTHORITY.—In accordance with this section, the Administration shall delegate to any qualified State or local de-

velopment company (as defined in section 503(e)) [that meets the eligibility requirements of subsection (b)(1)] the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 503.

[(b) ELIGIBILITY FOR DELEGATION.—

[(1) REQUIREMENTS.—A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) if—

[(A) the company—

[(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

[(ii) is participating in the Premier Certified Lenders Program under section 508; or

[(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 503; and

[(B) the company—

[(i) has one or more employees—

[(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 503; and

[(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

[(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

[(2) CONFIRMATION.—On request the Administration shall examine the qualifications of any company described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

[(c) SCOPE OF DELEGATED AUTHORITY.—

[(1) IN GENERAL.—Each qualified State or local development company to which the Administration delegates authority under section (a) may with respect to any loan described in subsection (a)—

[(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

[(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

[(i) defend or bring any claim if—

[(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 502; or

[(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

[(ii) oversee the conduct of any such litigation; and

[(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

[(2) ADMINISTRATION APPROVAL.—

[(A) LIQUIDATION PLAN.—

[(i) IN GENERAL.—Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

[(ii) ADMINISTRATION ACTION ON PLAN.—

[(I) TIMING.—Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

[(II) NOTICE OF NO DECISION.—With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

[(iii) ROUTINE ACTIONS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

[(B) PURCHASE OF INDEBTEDNESS.—

[(i) IN GENERAL.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other in-

debtedness secured by the property securing a defaulted loan.

[(ii) ADMINISTRATION ACTION ON REQUEST.—

[(I) TIMING.—Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

[(II) NOTICE OF NO DECISION.—With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

[(C) WORKOUT PLAN.—

[(i) IN GENERAL.—In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

[(ii) ADMINISTRATION ACTION ON PLAN.—

[(I) TIMING.—Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

[(II) NOTICE OF NO DECISION.—With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

[(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

[(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

[(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

[(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

[(i) shall be in writing;

[(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

[(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

[(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

[(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any em-

ployee of the company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

[(d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

[(1) does not meet the requirements of subsection (b)(1);

[(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

[(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

[(e) REPORT.—

[(1) IN GENERAL.—Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

[(2) CONTENTS.—Each report submitted under paragraph (1) shall include the following information:

[(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

[(i) the total cost of the project financed with the loan;

[(ii) the total original dollar amount guaranteed by the Administration;

[(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

[(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

[(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

[(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

[(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

[(D) A comparison between—

[(i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and

[(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

[(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.]

(b) ELECTION BY QUALIFIED STATE OR LOCAL DEVELOPMENT COMPANY.—

(1) A qualified State or local development company shall be eligible for the delegation of authority under subsection (a) if such company elects to accept such delegation during the 90-day period beginning on the date of the enactment of this subsection.

(2) One year after the date of the initial election, and annually thereafter by a date specified by the Administrator, a qualified State or local development company may make a new election to accept the delegation under subsection (a).

(3) An election under this subsection shall apply to all loans in the portfolio involved. An election made in a subsequent year does not terminate any foreclosure or liquidation under a previous election.

(c) SCOPE OF DELEGATED AUTHORITY.—

(1) Each qualified State or local development company that makes an election under subsection (b) shall perform all functions related to liquidation and foreclosure without obtaining prior approval of the Administrator.

(2) Not later than 5 calendar days after exercising delegated authority with respect to a specific loan, the qualified State or local development company shall report to the Administrator the actions that the company proposes to take with respect to the loan.

(3) The Administrator may prohibit an action proposed under paragraph (2) by so notifying the company in writing. The notification shall state the reasons for the prohibition, including a detailed explanation of how the proposed actions—

(A) will have a serious adverse effect on management of the Administration's activities under this title; or

(B) will affect the legal rights of the Administration or other agencies or instrumentalities of the United States.

(4) A prohibition under paragraph (3) shall apply only to the loan involved and shall not affect any other delegation.

(d) PURCHASE OF INDEBTEDNESS.—A qualified State or local development company may not commit the Administration to the purchase of additional indebtedness secured by property that is the subject of a defaulted loan without the written approval of the Administrator. The Administrator shall have 7 calendar days in which to act on a request for approval for such an additional purchase. Action by the Administrator under this subsection shall have no other effect on the delegation of authority exercised by the qualified State or local development company.

(e) FORECLOSURE AND LIQUIDATION BY ADMINISTRATOR.—

(1) The Administrator shall issue contracts to foreclose or liquidate loans made during any year for which a qualified State

or local development company did not make an election under subsection (b).

(2) In awarding contracts under this subsection, the Administrator shall not consolidate contract requirements that relate to more than one qualified State or local development company unless the Administrator determines that such consolidation will achieve—

(A) a reduction in cost of not less than 10 percent; or

(B) an increase in the recovered amount of not less than 10 percent.

(3) In awarding contracts under this section, the Administrator shall consider the experience and expertise of the offeror regarding the conduct of similar foreclosure and liquidation of indebtedness, the bankruptcy laws of the United States, valuation of property, and successful litigation.

(4) Reimbursement to contractors under this subsection shall be based on recovery of their costs (including salaries, expenses, and overhead) and a contingent fee, with respect to each loan which is subject to the contract, as follows:

(A) In the case of recovery of at least 50 percent of outstanding amount of such loan, a contingent fee equal to 5 percent of the recovery.

(B) In the case of recovery of at least 75 percent of such amount, a contingent fee equal to 10 percent of the recovery.

SEC. 511. SHORT FORM APPLICATION.

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this section, the Administrator shall prescribe—

(1) a low documentation loan application form for use in making loans under section 502 for guarantees of not more than $500,000; and

(2) for all other loans made under section 502, a short form application form that reduces the amount of information needed to process the loan by 30 percent from the size of the loan application in effect on January 1, 2003.

(b) USE OF DEVELOPMENT COMPANY FORMS.—If the Administrator does not comply with paragraph (1) or (2) of subsection (a), a qualified State or local development company may use its own forms until the Administrator prescribes the form involved.

SEC. 512. CENTRALIZED DEVELOPMENT COMPANY LOAN PROCESSING.

(a) ESTABLISHMENT.—

(1) Not later than 180 days after the date of the enactment of this section, the Administrator shall, using already appropriated funds and fees paid by qualified State and local development companies, establish two centers for approving loans under section 502, except as otherwise provided in section 508.

(2) The loan centers may not be located in the same Federal Region. One center shall be located in Region 1, 2, 3, 4, or 5, and one center shall be located in Region 6, 7, 8, 9, or 10.

(3) The Administrator is authorized to locate the centers with its existing LowDoc Loan Application Centers in Hazard, KY and Sacramento, CA, but employees who review applications for loans under section 502 shall not review applications for loan guarantees under section 7 of the Small Business Act (15 U.S.C. 636).

(4) If the Administrator does not establish the centers required by paragraph (1), the qualified State and local development companies shall have the authority to approve or deny applications without the consent of the Administrator.

(b) TIMING.—

(1)(A) From the date on which a loan application is received at a center established under subsection (a), the Administration shall have 5 business days to approve or deny the application.

(B) Not later than one business day after the date on which an application is received, the Administration shall notify the applicant and the qualified State or local development company in writing that the application was received and was either complete or incomplete. The notification shall specify the date and time at which the application was received. If the application is incomplete, the notification shall specify the material needed to make the application complete.

(C) The Administration may return an application for incompleteness not more than 3 times after which the applicant may use forms developed by the qualified State or local development company.

(2) An accredited lender designated under section 507 shall have the authority to approve or deny a loan application if the Administration does not act within 5 business days from the date a complete application is received by the center. Notwithstanding any other law, a qualified State or local development company that is not designated as an accredited or premier certified lender shall have the authority to approve or deny a loan if the Administration does not make a decision within 20 business days.

(c) APPEAL OF DENIAL.—

(1) An applicant shall have the right to appeal a denial to the Regional Administrator for the region in which the qualified State or local development company is headquartered. Not later than 3 business days after receipt, the Regional Administrator shall either concur with the denial or approve the loan.

(2) If the Regional Administrator denies the loan, the applicant shall have the right of appeal to the Deputy Administrator. Not later than 3 business days after receipt, the Deputy Administrator shall either concur with the denial by the Regional Administrator or approve the loan.

(3) The decision of the Deputy Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

SEC. 513. REPORTS.

The Administrator shall report on the performance of the loans made under this title on a semi-annual basis to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate. Such report shall include the currency and default rates.

* * * * * * *

SMALL BUSINESS ACT

[SEC. 2. (a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

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

[(A) enhancing their ability to export;

[(B) facilitating technology transfers;

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

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

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

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

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

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

[(d)(1) The assistance programs authorized by sections 7(i) and 7(j) of this Act are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

[(2)(A) With respect to the programs authorized by section 7(j) of this Act, the Congress finds—

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

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

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

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

[(v) that the power to let Federal contracts pursuant to section 8(a) of the Small Business Act can be an effective procurement assistance tool for development of business ownership among that own control little productive capital; and

[(vi) that the procurement authority under section 8(a) of the Small Business Act shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

[(B) It is therefore the purpose of the programs authorized by section 7(j) of this Act to—

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

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

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

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

[(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic

equality for such persons and improve the functioning of our national economy;

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

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

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

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

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

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

[(2) It is therefore the purpose of section 8(a) to—100–418.

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

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

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

[(g) In administering the disaster loan program authorized by section 7 of this Act, to the maximum extent possible, the Administration shall provide assistance and counseling to disaster victims in filing applications, providing information relevant to loan processing, and in loan closing and prompt disbursement of loan proceeds and shall give the disaster program a high priority in allocating funds for administrative expenses.

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

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

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

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

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

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

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

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

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

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

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

[(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

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

[(i) PROHIBITION ON THE USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY WITHIN THE UNITED STATES.—None of the funds made available pursuant to this Act may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

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

[(1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

[(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

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

[SEC. 3. (a)(1) For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in

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

[(2) ESTABLISHMENT OF SIZE STANDARDS.—

[(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

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

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

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

[(ii) provides for determining—

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

[(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

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

[(IV) other appropriate factors; and

[(iii) is approved by the Administrator.

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

[(b) For purposes of this Act, any reference to an agency or department of the United States, and the term "Federal agency," shall have the meaning given the term "agency" by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

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

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

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

[(i) which is maintained by such concern, and

[(ii) which provides that each participant in the plan is entitle to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of such Code) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

[(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator of which enters into an agreement with the Administrator which is binding on the trust and no such small business concern and which provides that—

[(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern.

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

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

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

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

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

[(B) such concern maintains a plan—

[(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1954).

[(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

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

[(iv) which meets such other requirements (similar to requirements applicable to employee ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Administrator may prescribe, and

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

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

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

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

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

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

[(f) For purposes of section 7 of this Act, the term "handicapped individual" means an individual—

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

[(2) who is a service-disabled veteran.

[(g) For purposes of section 7 of this Act, the term "energy measures" includes—

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

[(2) photovoltaic cells and related equipment;

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

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

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

[(6) hydroelectric power equipment;

[(7) wind energy conversion equipment; and

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

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

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

[(j) For the purposes of section 7(b)(2) of this Act, the term "small agricultural cooperative" means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

[(k) For the purposes of this Act, the term "disaster" means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

[(l) For purposes of this Act—

[(1) the term "computer crime" means"—

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

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

[(m) For purposes of this Act, the term "simplified acquisition threshold" has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

[(n) For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

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

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

[(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—In this Act:

[(1) BUNDLED CONTRACT.—The term "bundled contract" means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

[(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term "bundling of contract requirements" means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

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

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

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

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

[(3) SEPARATE SMALLER CONTRACT.—The term "separate smaller contract", with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

[(p) DEFINITIONS RELATING TO HUBZONES.—In this Act:

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

[(A) qualified census tracts;

[(B) qualified nonmetropolitan counties;

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

[(D) redesignated areas.

[(2) HUBZONE.—The term "HUBZone" means a historically underutilized business zone.

[(3) HUBZONE SMALL BUSINESS CONCERN.—The term "HUBZone small business concern" means—

[(A) a small business concern that is owned and controlled by one or more persons, each of whom is a United States citizen;

[(B) a small business concern that is—

[(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

[(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2)));

[(C) a small business concern—

[(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

[(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns; or

[(D) a small business concern that is—

[(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

[(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns.

[(4) QUALIFIED AREAS.—

[(A) QUALIFIED CENSUS TRACT.—The term "qualified census tract" has the meaning given that term in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

[(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term "qualified nonmetropolitan county" means any county—

[(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986; and

[(ii) in which—

[(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

[(II) the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

[(C) REDESIGNATED AREA.—The term "redesignated area" means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a "redesignated area" only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified.

[(5) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

[(A) IN GENERAL.—A HUBZone small business concern is "qualified", if—

[(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or

based on certification procedures, which shall be established by the Administration by regulation) that—

[(I) it is a HUBZone small business concern—

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

[(bb) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

[(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

[(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that—

[(aa) in the case of a contract for services (except construction), not less than 50 percent of the cost of contract performance incurred for personnel will be expended for its employees or for employees of other HUBZone small business concerns;

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

[(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and

[(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 31(c)(1)—

[(I) successfully challenged by an interested party; or

[(II) otherwise determined by the Administrator to be materially false.

[(B) CHANGE IN PERCENTAGES.—The Administrator may utilize a percentage other than the percentage specified in item (aa) or (bb) of subparagraph (A)(i)(III), if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category.

[(C) CONSTRUCTION AND OTHER CONTRACTS.—The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in items (aa) and (bb) of subparagraph (A)(i)(III) on contracts for general and specialty construction, and on contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B).

[(D) LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

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

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

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

[(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

[(A) ALASKA NATIVE CORPORATION.—The term "Alaska Native Corporation" has the same meaning as the term "Native Corporation" in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

[(B) ALASKA NATIVE VILLAGE.—The term "Alaska Native Village" has the same meaning as the term "Native village" in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

[(C) INDIAN RESERVATION.—The term "Indian reservation"—

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

[(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of the enactment of this paragraph, unless that tribe is recognized after that date of the enactment by either an Act of Congress or pursuant to regulations of the Secretary

of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

[(II) lands taken into trust or acquired by an Indian tribe after the date of the enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of the enactment; and

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

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

[(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

[(7) AGRICULTURAL COMMODITY.—The term "agricultural commodity" has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

[(q) DEFINITIONS RELATING TO VETERANS.—In this Act, the following definitions apply:

[(1) SERVICE-DISABLED VETERAN.—The term "service-disabled veteran" means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

[(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term "small business concern owned and controlled by service-disabled veterans" means a small business concern—

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

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

[(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term "small business concern owned and controlled by veterans" means a small business concern—

[(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

[(B) the management and daily business operations of which are controlled by one or more veterans.

[(4) VETERAN.—The term "veteran" has the meaning given the term in section 101(2) of title 38, United States Code.

[SEC. 4. (a) In order to carry out the policies of this Act there is hereby created an agency under the name "Small Business Administration" (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this Act, the term "United States" includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust territory of the Pacific Islands, and the District of Columbia.

[(b)(1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint five Associate Administrators (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958) to assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 32. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of this Act which provide assistance to minority small business concerns.

[(2) the Administrator also shall be responsible for—

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

[(i) employment layoffs, and new hires;

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

[(iii) number of business formation and failures;

[(iv) sales and new orders;

[(v) back orders;

[(vi) investment in plant and equipment;

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

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

[(ix) debt to equity ratios;

[(x) exports;

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

[(xii) concentration ratios; and

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

[(3) RISK MANAGEMENT DATABASE.—

[(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 of this Act and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

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

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

[(ii) the identity of the borrower;

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

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

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

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

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

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

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

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

[(xi) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of business, credit history, and type of loan.

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

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

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

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

[(i) provide small business concerns information regarding—

[(I) utilization and management of computer technology;

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

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

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

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

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

[(c)(1) There are hereby established in the Treasury the following revolving funds; (A) a disaster loan fund which shall be available for financing functions performed under section 7(b)(1), 7(b)(2), 7(b)(3), 7(b)(4), 7(c)(2), and 7(m) of this Act; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 5(g), 7(a), and 8(a) of this Act, and titles III, IV and V of the Small Business Investment Act of 1958.

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

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

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

and complete report on the status of each of the funds established by paragraph (1). Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed by law (sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847–849)) for wholly owned Government corporations.

[(5)(A) The Administration is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by section 4(c)(1) of this Act and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administration under this paragraph. The Secretary of the Treasury is authorized and directed to purchase any notes of the Administration issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act, as amended, are extended to include the purchase of notes issued by the Administration. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

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

[(ii) Following the close of each fiscal year, the Administration shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administration collects during that fiscal year on all financings made under this Act.

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

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

[(d) There is hereby created the Loan Policy Board of the Small Business Administration, which shall consist of the following mem-

bers, all ex officio: The Administration, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his stead as a member of the Loan Policy Board with respect to any matter or matters. The Loan Policy Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.

[(e) PROHIBITION ON THE PROVISION OF ASSISTANCE.—Notwithstanding any other provision of law, the Administration is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

[(f) CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.—

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

[(A) administrative order;

[(B) court order; or

[(C) repayment agreement entered into between the recipient and the custodial parent or State agency providing child support enforcement services,

that requires the recipient to pay child support, as such term is defined in section 462(b) of the Social Security Act.

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

[SEC. 5. (a) The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil-service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act; to define their authority and duties; and to pay the costs of qualification of certain authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this Act.

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

[(1) sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

[(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this Act, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

[(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this Act;

[(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 3709 of the Revised Statutes, as amended (41 U.S.C., sec 5), shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this Act if the premium therefor or the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this Act may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator form delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

[(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 7(a) and 7(b);

[(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this Act;

[(7) in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (in-

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

[(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 7(b) from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

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

[(10) upon purchase by the Administration of any deferred participation entered into under section 7 of this Act, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

[(11) make sure such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this Act or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of

witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;

[(12) impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees—

[(A) not to exceed $100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

[(B) not to exceed $300 for loan assumptions;

[(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 for which the applicant requests a commitment from the Administration for funding during the following year; and

[(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this Act and the Small Business Investment Act of 1958; and

[(13) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this paragraph and paragraph (12) shall be utilized solely to facilitate the administration of the program that generated the excess amounts.

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

[(d) Section 3648 of the Revised Statutes (31 U.S.C. 529) shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

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

[(2) The Administration may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this subsection only if—

[(A) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become insolvent or remain insolvent;

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

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

[(3) Notwithstanding the provisions of sections 7(a)(4)(C) and 7(i)(1) of this Act, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

[(4)(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes sought to be achieved herein, small require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

[(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or

[(ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or

[(iii) by a combination of the payments described in clause (i) and clause (ii).

[(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or par-

ticipant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

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

[(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been property closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

[(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

[(C) each loan, except each loan made under section 7(a)(14), shall have been fully disbursed to the borrower prior to any sale.

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

[(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 7(a) shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

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

[(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, or under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 660): *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

[(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust

or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust default of all loans constituting the pool.

[(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

[(4)(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 7(a) of this Act: *Provided,* That such fee shall not be charged to the borrower whose loan is guaranteed: and, *Provided further,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

[(B) The Administration is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.

[(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

[(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

[(h)(1) Upon the adoption of final rules and regulations, the Administration shall—

[(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;

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

[(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate

issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

[(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsection (f) and (g) of this section.

[(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

[SEC. 6. (a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this Act. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administration as fiscal agents for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

[(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 4(c) of this Act. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

[SEC. 7. (a) LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

[(1) IN GENERAL.—

[(A) CREDIT ELSEWHERE.—No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be

made unless it is shown that a participation is not available.

[(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

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

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

[(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds $150,000; or

[(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to $150,000.

[(B) REDUCED PARTICIPATION UPON REQUEST.—

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

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

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

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

[(ii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term "Preferred Lenders Program" means any program established by the Administrator, as authorized under the proviso in section 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) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

[(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall not exceed 90 percent.

[(3) No loan shall be made under this subsection—

[(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $1,000,000 (or if the gross loan amount would exceed $2,000,000), except as provided in subparagraph (B);

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

[(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed $350,000.

[(4) INTEREST RATES AND PREPAYMENT CHARGES.—

[(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided,* That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

[(B) PAYMENT OF ACCRUED INTEREST.—

[(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

[(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending

institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

[(iii) APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

[(C) PREPAYMENT CHARGES.—

[(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

[(I) the loan is for a term of not less than 15 years;

[(II) the prepayment is voluntary;

[(III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

[(IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

[(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

[(I) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

[(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

[(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

[(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

[(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That—

[(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

[(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining "sound value" shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further,* That such status need not be as sound as that required for general loans under this subsection; and

[(7) The Administration may defer payments on the principal of such loans for a grace period and use such other meth-

ods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

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

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

[(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

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

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

[(b) The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than $1,000,000.

[(13) The Administration may provide financing under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

[(14)(A) The Administration may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

[(B) When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

[(C) The Administration shall aggressively market its export financing program to small businesses.

[(15)(A) The Administration may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern.

[(B) The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

[(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1954), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

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

[(iii) there will be adequate management to assure management expertise and continuity.

[(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

[(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

[(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration.

[(16)(A) The Administration may guarantee loans under this paragraph to assist any eligible small business concern in an industry engaged in or adversely affected by international trade in the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade, if the Administration determines that the appropriate upgrading of plant and equipment will allow the concern to improve its competitive position. Each such loan shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan.

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

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

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

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

[(II) can demonstrate injury attributable to such competition.

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

[(18) GUARANTEE FEES.—

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

[(i) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

[(ii) A guarantee fee equal to 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

[(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

[(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

[(C) TWO-YEAR REDUCTION IN FEES.—With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

[(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

[(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

[(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

[(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at

any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

[(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

[(C) Authority to liquidate loans.—

[(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

[(ii) Automatic approval.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

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

[(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

[(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

[(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

[(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

[(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

[(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per cen-

tum of the balance of the financing outstanding at the time of disbursement.

[(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

[(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

[(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

[(II) No direct financing may be made unless it is shown that a participation is unavailable.

[(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

[(i) that is subordinated by its terms to all other borrowings of the issuer;

[(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

[(iii) the term of which is not more than twenty-five years; and

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

[(21)(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

[(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

[(I) the closure (or substantial reduction) of a Department of Defense installation; or

[(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

[(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

[(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

[(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

[(D) For purposes of this paragraph a qualified individual is—

[(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

[(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

[(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

[(E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

[(i) have the greatest potential for—

[(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

[(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

[(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

[(22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

[(23) 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. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.

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

[(24) NOTIFICATION REQUIREMENT.—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

[(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

[(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program

which is commenced by the Administrator on or after October 1, 1996.

[(B) PILOT PROGRAM DEFINED.—In this paragraph, the term "pilot program" means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

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

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

[(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

[(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

[(A) shall be required by the Administration in connection with any such loan for more than $250,000; or

[(B) may be required by the Administration or the lender in connection with any such loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

[(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

[(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the, Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

[(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or

other disasters: *Provided,* That such damage or destruction is not compensated for by insurance or otherwise: *And provided further,* That the Administration may increase the amount of the loan by up to an additional 20 per centum if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including, but not limited to, construction of retaining walls and sea walls, grading and contouring land, relocating utilities and modifying structures;

[(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided,* That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

[(C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

[(2) to make sure loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern or small agricultural cooperative located in an area affected by a disaster, if the Administration determines that the concern or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

[(A) a major disaster, as determined by the President under the Disaster Relief and Emergency Assistance Act; or

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

[(C) a disaster, as determined by the Administrator of the Small Business Administration; or

[(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable

terms in the disaster stricken area. Upon receipt of such certification, the Administration may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

[(3)(A) In this paragraph—

[(i) the term "essential employee" means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern;

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

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

[(I) to meet its obligations as they mature;

[(II) to pay its ordinary and necessary operating expenses; or

[(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

[(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

[(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 90 days after the date on which such essential employee is discharged or released from active duty.

[(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

[(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $1,500,000, unless such applicant constitutes a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the $1,500,000 limitation.

[(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

[No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided,* That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an

extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further,* That the provisions of paragraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding the provisions of any other law the interest rate on the Administration's share of any loan made under subsection (b) except as provided in subsection (c), shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eight of 1 per centum plus one-quarter of 1 per centum: *Provided, however,* That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding $10,000, and 3 per centum on the amount of such loan over $10,000 but not exceeding $40,000. The interest rate on the Administration's share of the first $250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than $2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. No later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committee of the Senate and House of Representatives having jurisdiction over measures relating to energy

conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

[In the Administration of the disaster loan program under paragraphs (1), (2), and (4) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

[(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

[(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such project is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

[(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his souse for so long as the Administration determines that making such payments would constitute a substantial hardship;

[(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

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

[(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed

$5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.

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

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

[(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970.

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.

[(E) A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act to a disaster loan under paragraph (1), (2), or (4) of this subsection.

[(c)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

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

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

[(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first $55,000 of such loan;

[(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is

a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

[(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eight of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided,* That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from one-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further,* That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed $500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.

[(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

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

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

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

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

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

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

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

[(C) in the case of a business or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

[(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of three years.

[(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rate for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided,* That no loan under

paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further,* That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further,* That the Administration shall not require collateral for loans of $10,000 or less which are made under paragraph (1) of subsection (b). Employees of concerns sharing a common business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

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

[(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) the term "an area affected by a disaster" includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

[(d) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.**]**

SEC. 2. FINDINGS; STATEMENTS OF POLICY.

(a) AID, COUNSEL, ASSISTANCE, ETC., TO SMALL BUSINESS CONCERNS.—The essence of the American economic system of private enterprise is free competition. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business, including small manufacturers, is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns, including small manufacturers, in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for manufactured goods, and property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business concerns, to insure that a fair proportion of the total sales of Government property be made to such concerns, and to maintain and strengthen the overall economy of the Nation.

(b) ASSISTANCE TO COMPETE IN INTERNATIONAL MARKETS.—

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

(A) enhancing their ability to export;

(B) facilitating technology transfers;

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

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

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

(F) ensuring that the interests of small business concerns are adequately represented in bilateral and multilateral trade negotiations; and

(G) improving the economic health of small manufacturers through reduction in unnecessary regulation and improvements in the procurement process that will enhance the ability of small manufacturers to compete against foreign manufacturers.

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

(c) AID FOR AGRICULTURALLY RELATED INDUSTRIES; FINANCIAL ASSISTANCE.—It is the declared policy of the Congress that the Government, through the Small Business Administration, should provide aid and assistance, including the financial assistance authorized by this Act, to small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

(d) USE OF ASSISTANCE PROGRAMS TO ESTABLISH, PRESERVE, AND STRENGTHEN SMALL BUSINESS CONCERNS.—

(1) The assistance programs authorized by sections 7(i), 8(a), and 8(b) should be utilized to assist in the establishment, preservation, and strengthening of small business concerns and the improvement of the managerial skills employed in such concerns, with special attention to small business concerns—

(A) located in urban or rural areas with high proportions of unemployed or low-income individuals; and

(B) owned by low-income individuals.

(2) With respect to the programs authorized by section 8(a), the Congress finds—

(A) that ownership and control of productive capital is concentrated in the economy of the United States and cer-

tain groups, therefore, own and control little productive capital;

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

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

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

(E) that the power to let Federal contracts pursuant to section 8(a) can be an effective procurement assistance tool for development of business ownership, including ownership of small manufacturers, among groups that own and control little productive capital; and

(F) that the procurement authority under section 8(a) shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(3) It is therefore the purpose of the programs authorized by section 8(a) to—

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

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

(e) PARTICIPATION IN FREE ENTERPRISE SYSTEM BY SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS.—

(1) With respect to the business development programs carried out by the Administrator, the Congress finds—

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

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

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

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

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

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

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

(2) It is therefore the purpose of section 8(a) to—

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

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

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

(f) ASSISTANCE TO DISASTER VICTIMS UNDER DISASTER LOAN PROGRAM.—In administering the disaster loan program authorized by section 7, the Administrator should—

(1) provide assistance and counseling to disaster victims in filing applications;

(2) provide information relevant to loan processing and loan closing;

(3) promptly disburse loan proceeds; and

(4) give the disaster program a high priority in allocating funds for administrative expenses.

(g) ASSISTANCE TO WOMEN OWNED BUSINESS.—

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

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

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

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

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

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

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

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

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

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

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

(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

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

(h) CONTRACT BUNDLING.—It is the declared policy of the Congress that each Federal agency should—

(1) comply with congressional intent to foster the participation of small business concerns, in the following order, as prime contractors, subcontractors, and suppliers;

(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

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

(i) SMALL MANUFACTURERS.—

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

(A) the manufacturing sector is a critical element of the Nation's economic security because it provides high-paying jobs that support other sectors of the economy dominated by small business;

(B) America's small manufacturers face substantial competition from large manufacturers that source components and equipment from business concerns located in other

countries with lower wage rates, fewer regulatory restrictions, and beneficial currency policies;

(C) it is in the national interest to expeditiously grow America's small manufacturers; and

(D) such growth can be achieved through better access to capital, improved technical assistance, and increased procurement of manufactured goods by the United States, America's universities, and large businesses that would otherwise source goods overseas.

(2) It is therefore, the purpose of those programs and activities conducted under the authority of this Act that assist small manufacturers to—

(A) vigorously promote the legitimate interests of small manufacturers;

(B) remove, insofar as possible, barriers that are encountered by small manufacturers in accessing capital, obtaining necessary technical assistance, and selling goods to the United States, America's universities, and large businesses that would otherwise source goods overseas;

(C) require the Administrator to engage in a systematic and sustained effort to identify, define, and analyze the barriers to growth facing America's small manufacturers, recommend changes in policy that will reduce those barriers, and promote the involvement of America's small manufacturers in the partnership of the public and private sectors.

SEC. 3. DEFINITIONS.

(a) SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

(2) ESTABLISHMENT OF SIZE STANDARDS.—

(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

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

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

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

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average em-

ployment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

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

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

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

(3) AGRICULTURAL ENTERPRISES.—Notwithstanding paragraphs (1) and (2), an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $750,000.

(4) RECERTIFICATIONS.—

(A) TIMING RESTRICTION.—For purposes of determining if a business concern that has been awarded a contracting opportunity as a small business concern is still a small business concern, the Administrator shall not require such concern to be recertified as a small business concern more frequently than each 5 years, unless there has been a change in ownership, control, or affiliation, in which case the small business concern shall recertify its status at that time.

(B) GROWTH THRESHOLD.—In the case of any recertification described in subparagraph (A) of a business concern, such concern shall not fail to be treated as a small business concern for purposes of contracting opportunities awarded before the date of such recertification solely because such concern exceeds—

(i) the annual receipts standard applicable to such concern by 20 percent or less of such standard; or

(ii) the number of employees standard applicable to such concern by 5 percent or less of such standard.

(b) AGENCY.—For purposes of this Act, any reference to an agency or department of the United States, and the term "Federal agency", shall have the meaning given the term "agency" by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

(c) QUALIFIED EMPLOYEE TRUSTS.—For purposes of this Act:

(1) The term "qualified employee trust" means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986)—

(i) which is maintained by such concern; and

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of such Code) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern;

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

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

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

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

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

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1986);

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted;

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

(iv) which meets such other requirements (similar to requirements applicable to employee stock ownership

plans as defined in section 4975(e)(7) of such Code) as the Administrator may prescribe; and

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

(d) DEFINITIONS RELATING TO INDIAN TRIBES.—For purposes of this Act:

(1) INDIAN TRIBE.—The term "Indian tribe" has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(2) QUALIFIED INDIAN TRIBE.—The term "qualified Indian tribe" means any Indian tribe that owns and controls 100 percent of a small business concern, except as otherwise provided in section 8.

(e) STATE; UNITED STATES.—For purposes of this Act, the terms "State" and "United States" include each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(f) CONTRACTING OFFICER.—For purposes of this Act, the term "contracting officer" has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

(g) SMALL BUSINESS DEVELOPMENT CENTER.—For purposes of this Act, the term "small business development center" means any office that provides any portion of the services described in section 21 under such section.

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

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

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

(k) DISASTER.—For purposes of this Act, the term "disaster" means a sudden event which causes severe damage including floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, riots, civil disorders, acts of terrorism, or other catastrophes.

(l) AGRICULTURAL ENTERPRISES.—For purposes of this Act, the term "agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

(m) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of this Act, the term "simplified acquisition threshold" has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(n) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—For purposes of this Act, the term "small business concern owned and controlled by women" means any small business concern if—

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

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

(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—For purposes of this Act:

(1) BUNDLED CONTRACT.—The term "bundled contract" means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements without regard to its designation by the procuring agency or whether a study of the effects of the solicitation on civilian or military personnel has been made.

(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term "bundling of contract requirements" means the use of any bundling methodology to satisfy 2 or more requirements for goods or services, including construction services, that have previously been provided to, or performed for, the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract or order for which the offers are solicited that is likely to be unsuitable for award to a small business concern due to—

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

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

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

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

(3) BUNDLING METHODOLOGY.—The term "bundling methodology" means—

(A) a solicitation to obtain offers for a single contract or a multiple award contract;

(B) a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract; or

(C) the creation of any new procurement requirement that permits a consolidation of contract requirements.

(4) SEPARATE SMALLER CONTRACT.—The term "separate smaller contract", with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) DEFINITIONS RELATING TO HUBZONES.—For purposes of this Act:

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

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

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

(D) redesignated areas.

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

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

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

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2)));

(C) a small business concern—

(i) that is wholly owned by one or more Indian tribal organizations, or by a corporation that is wholly owned by one or more Indian tribal organizations; or

(ii) that is owned in part by one or more Indian tribal organizations, or by a corporation that is wholly owned by one or more Indian tribal organizations, if all other owners are either United States citizens or small business concerns; or

(D) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns.

(4) QUALIFIED AREAS.—

(A) QUALIFIED CENSUS TRACT.—The term "qualified census tract" has the meaning given that term in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term "qualified nonmetropolitan county" means any county—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent

census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of such Code; and

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(II) the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

(C) REDESIGNATED AREA.—The term "redesignated area" means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a "redesignated area" only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(5) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term "qualified HUBZone small business concern" means any small business concern if the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by regulation) that—

(i) it is a HUBZone small business concern—

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

(II) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by one or more of the Indian tribal organization owners, or reside within any HUBZone adjoining any such Indian reservation;

(ii) the small business concern will attempt to maintain the applicable employment percentage under clause (i) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

(iii) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that—

(I) in the case of a contract for services (except construction), not less than 50 percent of the cost of contract performance incurred for personnel will

be expended for its employees or for employees of other HUBZone small business concerns;

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

(III) it is a small business concern, the majority of which is owned and controlled by one or more individuals determined by the Administrator to be economically disadvantaged; and

(IV) it has received a site visit from a district counsel to verify its eligibility before first responding to a solicitation from a Federal agency for goods or services under section 31 and again before first responding to a solicitation from a Federal agency for goods or services under section 31 after any change in the primary location of the concern.

(B) SITE VISITS BY DISTRICT COUNSEL.—A district counsel, not later than 5 days after conducting any site visit described in subparagraph (A)(iii)(IV), shall make a written certification to the district director and general counsel regarding the status of the concern as a qualified HUBZone small business concern.

(C) PROVISION OF FALSE INFORMATION.—Such term shall not include any small business concern if any certification made or information provided by such concern under subparagraph (A) has been, in accordance with the procedures established under section 31(c)(1)—

(i) successfully challenged by an interested party; or

(ii) otherwise determined by the Administrator to be materially false.

(D) PERCENTAGE ADJUSTMENTS.—The Administrator may utilize a percentage other than the percentage specified in subclause (I) or (II) of subparagraph (A)(iii), if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, but under no circumstance shall such adjustment reduce the percentage below 33 percent.

(E) CONSTRUCTION AND OTHER CONTRACTS.—The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in subclauses (I) and (II) of subparagraph (A)(iii) on contracts for general and specialty construction, and on contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (D).

(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

(A) ALASKA NATIVE CORPORATION.—The term "Alaska Native Corporation" has the same meaning as the term "Native Corporation" in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(B) ALASKA NATIVE VILLAGE.—The term "Alaska Native Village" has the same meaning as the term "Native village" in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(C) INDIAN RESERVATION.—The term "Indian reservation"—

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

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior; and

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

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

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

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on December 21, 2000).

(D) INDIAN TRIBAL ORGANIZATION.—The term "Indian tribal organization" has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4506(l)).

(q) DEFINITIONS RELATING TO VETERANS.—For purposes of this Act:

(1) SERVICE-DISABLED VETERAN.—The term "service-disabled veteran" means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term "small business concern owned and controlled by service-disabled veterans" means a small business concern—

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

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

vere disability, the spouse or permanent caregiver of such veteran.

(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term "small business concern owned and controlled by veterans" means a small business concern—

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

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) VETERAN.—The term "veteran" has the meaning given the term in section 101(2) of title 38, United States Code.

(r) SMALL MANUFACTURER.—For purposes of this Act, the term "small manufacturer" means any small business concern if—

(1) the primary business of the concern is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(2) all of its facilities that are used for production are located in the United States.

(s) SMALL BUSINESS LENDING COMPANY.—For purposes of this Act, the term "small business lending company" means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(t) NON-FEDERALLY REGULATED SBA LENDERS.—For purposes of this Act, the term "Non-Federally regulated SBA lenders" means a business concern if—

(1) such concern is authorized by the Administrator to make loans under section 7;

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

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

(u) PROCUREMENT CENTER REPRESENTATIVE.—For purposes of this Act, the term "procurement center representative" means an employee of the Administration whose sole responsibility is to perform the functions referred to in section 15(l).

(v) COMMERCIAL MARKETING REPRESENTATIVE.—For purposes of this Act, the term "commercial marketing representative" means an employee of the Administration whose sole responsibility is to perform the functions referred to in section 8(d).

(w) TEAM.—For purposes of this Act, the term "team" means two or more small business concerns who respond together to a solicitation, as one entity, for the purposes of providing goods or services to a Federal agency. A team shall be considered a small business concern provided that each member of the team is a small business concern.

SEC. 4. SMALL BUSINESS ADMINISTRATION.

(a) ESTABLISHMENT.—In order to carry out the policies of this Act and the Small Business Investment Act of 1958, there is an agency known as the "Small Business Administration" (also referred to in this Act as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or depart-

ment of the Federal Government. The principal office of the Administration shall be located in the District of Columbia.

(b) APPOINTMENT OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR.—

(1) ADMINISTRATOR.—The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with the needs and problems of small business concerns. The Administrator shall not engage in any other business, vocation, or employment other than that of serving as Administrator.

(2) DEPUTY ADMINISTRATOR.—The President shall appoint, by and with the advice and consent of the Senate, a Deputy Administrator, whose principal function shall be to assist the Administrator in the daily management of the Administration.

(c) POWERS OF THE ADMINISTRATOR.—

(1) USE OF SEAL.—The Administrator may adopt, alter, and use a seal, which shall be judicially noticed.

(2) SUE AND BE SUED.—The Administrator may sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property.

(3) RULES AND REGULATIONS.—The Administrator may make such rules and regulations as he deems necessary to carry out this Act and the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.). Any such rules or regulations, other than those relating to agency management or personnel, shall be issued pursuant to section 553(b) of title 5, United States Code.

(4) FACILITIES AND STAFF OF FEDERAL AGENCIES.—Upon request of the Administrator, the head of any Federal department or agency may provide, on a reimbursable or nonreimbursable basis, information, services, facilities (including any field service thereof), or any of the personnel of that department or agency to the Administrator to assist in carrying out this Act and the Small Business Investment Act of 1958.

(5) INVESTIGATIONS; SUBPOENAS.—

(A) INVESTIGATIONS.—The Administrator may make such investigations as the Administrator deems necessary to determine whether a recipient of or participant in any assistance under this Act or any other person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act.

(B) STATEMENTS.—The Administrator shall permit any person to file with it a statement in writing, under oath or otherwise as the Administrator shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(C) SUBPOENAS.—For the purpose of any investigation, the Administrator may administer oaths and affirmations,

subpoena 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.

(D) CONTEMPT PROCEEDINGS.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administrator 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 Administrator, 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.

(6) GIFTS.—

(A) IN GENERAL.—The Administrator may solicit, accept, hold, administer, and utilize gifts, devises, bequests, cash, and temporary use of property, both real and personal, and donations of personal services for the purpose of aiding or facilitating the Administrator in providing training to persons, employees, small business concerns and small manufacturers, and technical assistance to small business concerns and small manufacturers.

(B) AUDITS.—Any such gifts, devises, or bequests of property shall be held in a separate account and shall be subject to quarterly audits by the Inspector General of the Administration who shall report quarterly to the Congress on the Administrator's use of such gifts, bequests, devises, and donations of personal services including an assessment of whether such gifts, bequests, devises, and personal services have advanced the purposes of this Act.

(C) AUTHORITY TO CHARGE FEES.—Notwithstanding any other provision of this Act, the Administrator is authorized to charge nominal fees to attendees in order to cover costs for any event or publication produced pursuant to subparagraph (A).

(D) CONFLICTS OF INTEREST.—No employee of the Administration may accept or solicit any gift, bequest, devise, or donation of personal services if such acceptance or solicitation would, in the opinion of the General Counsel, create a conflict of interest.

(E) ACCEPTANCE OF SERVICES AND FACILITIES FOR DISASTER LOAN PROGRAM.—The Administrator may accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 7(b). Subpara-

graph (B) shall not apply to any services or facilities accepted under this subparagraph.

(7) CO-SPONSORSHIP OF EVENTS.—

(A) AUTHORIZATION.—The Administrator, after consultation with the General Counsel, may permit any eligible donor of any gift, bequest, devise, or donation of personal services to be a named cosponsor of any event conducted by the Administrator or any publication of the Administrator.

(B) ELIGIBLE DONOR.—For purposes of this paragraph, the term "eligible donor" means, with respect to any event or publication, any donor if such donor provides, directly or in-kind, at least 50 percent of the cost of such event or publication, provided further that any such co-sponsorship must be approved by an Associate Administrator, after consultation with the General Counsel.

(C) LIMITED DELEGATION.—The Administrator may not delegate the authority described in subparagraph (A) except to the Deputy Administrator or any Associate Administrator.

(D) REPORT TO CONGRESS.—The Inspector General of the Administration shall report semi-annually to Congress on the Administrator's use of co-sponsorship. Such report shall include the Inspector General's assessment of whether such co-sponsorships have advanced the purposes of this Act.

(d) OTHER PROVISIONS.—

(1) REQUIREMENTS FOR ASSISTANCE.—No loan shall be made or equipment, facilities, or services furnished by the Administrator under this Act to any business concern unless the owners, partners, or officers of such business concern—

(A) certify to the Administrator the names of any attorneys, agents, or other persons engaged by or on behalf of such business concern for the purpose of expediting applications made to the Administrator for assistance of any sort, and the fees paid or to be paid to any such persons;

(B) execute an agreement binding any such business concern for a period of two years after any assistance is rendered by the Administrator to such business concern, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administrator shall have determined involve discretion with respect to the granting of assistance under this Act; and

(C) furnish the names of lending institutions to which such business concern has applied for loans together with dates, amounts, terms, and proof of refusal.

(2) AUTHORITY RELATING TO TRANSFER OF FUNCTIONS.—The President may transfer to the Administrator any functions, powers, and duties of any department or agency which relate primarily to small business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended

balances of appropriations and other funds available to the department or agency from which the transfer is made.

(3) FAIR CHARGES.—To the fullest extent the Administrator deems practicable, he shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administrator.

(4) NON-DUPLICATION.—The Administrator shall not duplicate the work or activity of any other department or agency of the Federal Government. Nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

(5) PREPAYMENT OF RENTALS.—Subsections (a) and (b) of section 3324 of title 31, United States Code, shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

(6) NONDISCRIMINATION.—In carrying out this Act and the Small Business Investment Act of 1958, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Administrator.

(7) GROUPS RECEIVING SPECIAL CONSIDERATION.—In providing assistance under this Act and the Small Business Investment Act of 1958, the Administrator shall give special consideration to—

(A) veterans of the Armed Forces of the United States and their survivors or dependents; and

(B) small manufacturers.

(8) UNLAWFUL RESIDENTS.—None of the funds made available pursuant to this Act may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

(9) OBSCENE PRODUCTS AND SERVICES.—The Administrator is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

(10) ECONOMIC DATABASE; INDICES AND REPORTS.—The Administrator shall—

(A) establish and maintain an external small business economic data base for the purpose of providing the Congress and the President information on the economic condition and the expansion or contraction of the small business sector;

(B) publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include data on—

(i) employment, layoffs, and new hires;

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

(iii) number of business formations and failures;

(iv) sales and new orders;

(v) back orders;

(vi) investment in plant and equipment;

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

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

(ix) debt to equity ratios;

(x) exports;

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

(xii) concentration ratios; and

(C) in consultation with the Chief Counsel for Advocacy, publish annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired pursuant to subparagraph (A).

SEC. 5. FINANCIAL MANAGEMENT.

(a) ACCOUNTS.—

(1) IN GENERAL.—All repayments of loans, debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administrator shall be deposited into appropriate accounts and funds as determined by the Administrator.

(2) REPORT AND BUDGET.—The Administrator shall submit to the Committees on Appropriations, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter a full and complete report on the status of each of the accounts and funds referred to in paragraph (1). Business-type budgets for each of the accounts and funds referred to in paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed for wholly owned Government corporations under sections 9103 and 9104 of title 31, United States Code.

(3) ISSUANCE OF NOTES.—

(A) ISSUANCE.—The Administrator may issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the accounts and funds referred to in paragraph (1) and for authorized expenditures out of the accounts and funds.

(B) FORM.—The notes authorized by this paragraph shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may

be prescribed by the Administrator with the approval of the Secretary of the Treasury.

(C) INTEREST RATE.—Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administrator under this paragraph.

(D) PURCHASE BY TREASURY.—The Secretary of the Treasury shall purchase any notes of the Administration issued under subparagraph (A). For purposes of purchasing such notes, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code. The purposes for which such securities may be issued under such chapter are extended to include the purchase of notes issued by the Administrator under subparagraph (A). All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States.

(4) PAYMENTS TO TREASURY.—

(A) EXCESS FUNDS.—Moneys in any account or fund referred to in paragraph (1) which are not needed for current operations shall remain in such account or fund and shall be available solely to carry out the provisions and purposes of programs operated from such account or fund pursuant to law as provided in appropriations Acts.

(B) ACTUAL INTEREST.—Following the close of each fiscal year, the Administrator shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administrator collects during that fiscal year on all financings made under this Act.

(C) OTHER INTEREST.—Except on those loan disbursements on which interest is paid under subparagraph (B), the Administrator shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest received by the Administration on financing functions performed under this Act and titles III and V of the Small Business Investment Act of 1958 if the capital used to perform such functions originated from appropriated funds. Such payments shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

(5) CONTRIBUTIONS TO EMPLOYEES COMPENSATION FUND.—The Administrator shall contribute to the employee's compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the accounts and funds referred to in paragraph (1). The annual billings shall also include a statement of the fair portion of the cost of the administration of such funds, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in any fiscal year, such sums as may

be necessary for losses and interest subsidies incurred by the accounts and funds referred to in paragraph (1) and not previously reimbursed. All borrowing authority contained in this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) FINANCIAL MANAGEMENT POWERS.—

(1) SALE OF FINANCINGS, ETC.—

(A) IN GENERAL.—The Administrator, under regulations prescribed by him and codified in the Code of Federal Regulations, may assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this Act, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection.

(B) LIMITATION.—Notwithstanding subparagraph (A), the Administrator shall not sell any portion of the Administration's interest in, or the rights of the Administration with respect to, any loan made directly or through immediate participation under section 7(b), including by direct sale, through the sale of loan participations, or by including such loan in a pool of assets for the purpose of selling asset-backed securities during—

(i) the 3-year period beginning on the date that such loan was originated; and

(ii) the 3-month period beginning at the end of such 3-year period if, at any time during the 3-month period ending at the end of such 3-year period, the Administrator was engaged in negotiations with the borrower for the purpose of substantially altering the terms of such loan.

(2) USE OF FEDERAL RESERVE DEPOSITORIES.—All moneys of the Administrator not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administrator. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administrator in the general performance of its powers conferred by this Act. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administrator. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administrator, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(3) REAL PROPERTY.—

(A) CONVEYANCE.—The Administrator may convey and execute in the name of the Administration deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to

real property or any interest therein acquired by the Administrator pursuant to the provisions of this Act. Such authority may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney.

(B) OTHER AUTHORITY.—The Administrator may deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this Act.

(4) COLLECTIONS.—The Administrator may pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him, including by obtaining deficiency judgments or otherwise in the case of mortgages assigned to the Administrator.

(5) ACQUISITION OF PROPERTY.—The Administrator may acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in subsection (a) or (b) of section 7.

(6) POWER OF ATTORNEY.—Nothing in this section shall prevent the Administrator from delegating any authority provided under this section by power of attorney to any officer or agent he may appoint.

(c) SALE OF GUARANTEED LOANS BY LENDERS.—

(1) IN GENERAL.—The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administrator shall establish, subject to the following limitations:

(A) Prior to the approval of the sale, or upon any subsequent sale, of any loan guaranteed by the Administrator, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administrator, the Administrator shall review and approve only materials not previously approved.

(B) All fees due the Administrator on a guaranteed loan shall have been paid in full prior to any sale.

(C) Each loan, except each loan made under section 7(a)(14), shall have been fully disbursed to the borrower prior to any sale.

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

(3) PROCEDURES.—The Administrator shall develop such procedures as are necessary for:

(A) The facilitation, administration, and promotion of secondary market operations.

(B) Assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

(4) CERTAIN REGULATIONS REQUIRED.—The unguaranteed portion of any loan made under section 7(a) shall not be sold unless a final regulation promulgated by the Administrator is in effect that applies uniformly to both depository institutions and other lenders and sets forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

(5) PREPAYMENTS.—Nothing in this subsection or subsection (d) shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a), the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to subsection (f)(3).

(d) ISSUANCE OF TRUST CERTIFICATES.—

(1) IN GENERAL.—The Administrator may issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, or under section 502 of the Small Business Investment Act of 1958. Such trust certificates shall be based on and backed by a trust or pool approved by the Administrator and composed solely of the entire guaranteed portion of such loans.

(2) GUARANTEE.—

(A) AUTHORIZATION.—The Administrator 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 Administrator or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. 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 Administrator or its agent pursuant to this subsection.

(B) PREPAYMENT.—In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool.

(C) INTEREST; REDEMPTION.—Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administrator only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

(3) FEES.—

(A) IN GENERAL.—The Administrator may collect a fee for any loan guarantee sold into the secondary market under

subsection (c) 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 Administrator.

(B) COLLECTION.—Any such fee imposed by the Administrator shall be collected by the Administrator or by the agent which carries out on behalf of the Administrator the central registration functions required by subsection (e) and shall be paid to the Administrator and used solely to reduce the subsidy on loans guaranteed under section 7(a). Any such fee shall not be charged to the borrower whose loan is guaranteed. Nothing in this paragraph shall preclude any agent of the Administrator from collecting a fee approved by the Administrator for the functions described in subsection (e).

(C) LATE FEES.—The Administrator is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.

(4) SUBROGATION.—In the event the Administrator pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

(5) LAWS SUPERSEDED.—No federal, state, or local law, shall preclude or limit the exercise by the Administrator of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

(e) CENTRAL REGISTRY OF LOANS AND TRUST CERTIFICATES.—

(1) ESTABLISHMENT.—Upon the adoption of final rules and regulations, the Administrator shall—

(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (c) and (d);

(B) contract with an agent to carry out on behalf of the Administrator the central registration functions of this subsection and the issuance of trust certificates to facilitate pooling;

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act, and to the purchaser of a trust certificate issued pursuant to subsection (d), information on the terms, conditions, and yield of such instrument; and

(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (c) and (d).

(2) BONDING REQUIREMENT.—The agent referred to in paragraph (1)(B) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interest of the Government.

(3) SELLER.—For purposes of this subsection, the term "seller", with respect to the sale of any loan, does not include the entity which made the loan or any individual or entity which sells three or fewer guaranteed loans per year.

(4) BOOK-ENTRY SYSTEM.—Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administrator may,

with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

(5) AGENT FEES.—The Administrator may compensate an agent described in paragraph (1)(B) through transaction and servicing fees charged to program users and through interest earnings on payments under the agent's control.

(f) OTHER SPECIAL RULES AND AUTHORITIES RELATED TO LOAN PROGRAMS.—

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

(2) FEES.—The Administrator may impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees—

(A) not to exceed $100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

(B) not to exceed $300 for loan assumptions;

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 for which the applicant requests a commitment from the Administrator for funding during the following year;

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administrator under the authority of this Act and the Small Business Investment Act of 1958; and

(E) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this subsection shall be utilized solely to facilitate the administration of the program that generated the excess amounts.

(3) POWER TO UNDERTAKE AND SUSPEND LOANS.—

(A) IN GENERAL.—Subject to the requirements and conditions contained in this paragraph, upon application by a small business concern which is the recipient of a loan

made under this Act, the Administrator may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administrator. While such payments are being made by the Administrator pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

(B) REQUIREMENTS.—The Administrator may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this paragraph only if—

(i) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administrator, become insolvent or remain insolvent;

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

(iii) the small business concern executes an agreement in writing satisfactory to the Administrator as provided by subparagraph (D) and takes such actions as are required under subparagraph (E).

(C) EXTENSION OF MATURITY.—Notwithstanding the provisions of sections 7(a)(10) and 7(i)(1), the Administrator may extend the maturity of any loan on which the Administrator undertakes or suspends the obligation pursuant to this paragraph for a corresponding period of time.

(D) AGREEMENT.—Prior to the undertaking or suspension by the Administrator of any small business concern's obligation under this subsection, the Administrator, consistent with the purposes sought to be achieved under this paragraph, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period;

(ii) pursuant to a repayment schedule agreed upon by the Administrator and the small business concern; or

(iii) by a combination of the payments described in clauses (i) and (ii).

(E) SECURITY; OTHER ACTIONS.—The Administrator shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administrator deems appropriate in the circumstances, including the provision of such security as the Administrator deems necessary or appropriate to insure that the rights and interests of the lender (Administration or participant) will be safeguarded ade-

quately during and after the period in which such obligation is so undertaken or suspended.

(F) REQUIRED PAYMENTS.—For purposes of this paragraph, the term "required payments" means, with respect to any loan, payments of principal and interest under the loan.

(4) INTEREST RATE ON DEFERRED PARTICIPATION SHARE.—Upon purchase by the Administrator of any deferred participation entered into under section 7, the Administrator may continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness.

(5) SUBORDINATION TO CERTAIN STATE TAX LIENS.—Any interest held by the Administrator in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(g) RISK MANAGEMENT DATABASE.—

(1) ESTABLISHMENT.—The Administrator shall maintain, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(2) CONTENTS.—In addition to such other information as the Administrator considers appropriate, the database established under this subsection shall, with respect to each loan program described in paragraph (1), include information relating to—

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

(B) the identity of the borrower;

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

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

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

(F) the principal line of business of the borrower, as identified by North American Industrial Classification System Code;

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

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

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

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

(K) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of business, credit history, and type of loan.

SEC. 6. ORGANIZATION AND STAFF.

(a) GENERAL ORGANIZATIONAL AUTHORITY.—

(1) OFFICES.—Except as otherwise provided in this Act, the Administrator may create subsidiary offices in the Administration to carry out this Act and the Small Business Investment Act of 1958.

(2) EMPLOYEES.—The Administrator may, in accordance with applicable provisions of title 5, United States Code, select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out this Act and the Small Business Investment Act of 1958.

(b) ASSOCIATE ADMINISTRATORS.—The Administrator shall only appoint the following Associate Administrators:

(1) The Associate Administrator for Capital Access, who shall be appointed from civilian life and have a minimum of five years experience in providing investment or banking services to businesses.

(2) The Associate Administrator for Government Contracting and Minority Small Business Opportunities, who shall have a minimum of five years of experience in Federal procurement.

(3) The Associate Administrator for Enterprise Outreach and Training, who shall have a minimum of five years experience in community-based outreach programs.

(4) The Associate Administrator for Administration and Management, who shall act as the Chief Operating Officer for the Administration and who shall oversee the activities of the regional administrators.

(c) ESTABLISHMENT OF CERTAIN OFFICES.—There are in the Administration the following offices:

(1) The Office of Minority Small Business and Capital Ownership Development, which shall be administered by the assistant administrator appointed under subsection (d)(1).

(2) The Office of Veterans Business, which shall be administered by the assistant administrator appointed under subsection (d)(2).

(3) The Office of Small Business Development Centers, which shall be administered by the assistant administrator appointed under subsection (d)(3).

(4) The Office of Investment, which shall be administered by the assistant administrator appointed under subsection (d)(4).

(5) The Office of Lender Oversight, which shall be administered by the assistant administrator appointed under subsection (d)(5).

(6) The Office of Congressional and Legislative Affairs, which shall be administered by the assistant administrator appointed under subsection (d)(6).

(7) The Office of International Trade, which shall be administered by the assistant administrator appointed under subsection (d)(7).

(8) The Office of Women's Business Ownership, which shall be administered by the assistant administrator appointed under subsection (d)(8).

(d) ASSISTANT ADMINISTRATORS.—The Administrator shall appoint the following Assistant Administrators:

(1) The Assistant Administrator for Minority Small Business and Capital Ownership Development, who—

(A) shall have a minimum of 5 years experience within the Administration in assisting minority small businesses before being appointed under this paragraph;

(B) shall be responsible for carrying out subsections (a), (b), and (c) of section 8;

(C) shall be a career employee in the Senior Executive Service; and

(D) shall report to the Associate Administrator for Government Contracting and Minority Small Business Opportunities.

(2) The Assistant Administrator for Veterans Business, who—

(A) shall have a minimum of 5 years experience within the Administration or the Department of Veterans Affairs (or in combination) in providing entrepreneurial outreach to veterans before being appointed under this paragraph;

(B) shall be responsible for the formulation, execution, and promotion of the 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;

(C) shall act as an ombudsman for full consideration of veterans in all programs of the Administration;

(D) shall be a career employee and may be an appointee in the Senior Executive Service; and

(E) shall report to the Associate Administrator for Enterprise Outreach and Training.

(3) The Assistant Administrator for Small Business Development Centers who—

(A) shall have a minimum of 5 years experience in entrepreneurial outreach to small businesses or as an educator in a business program in an institution of higher learning (or in combination), before being appointed under this paragraph;

(B) shall carry out section 21;

(C) shall be a career employee and may be an appointee in the Senior Executive Service; and

(D) shall report to the Associate Administrator for Enterprise Outreach and Training.

(4) The Assistant Administrator for Investment who—

(A) shall carry out title III of the Small Business Investment Act of 1958;

(B) shall be a career employee and may be an appointee in the Senior Executive Service; and

(C) shall report to the Associate Administrator for Capital Access.

(5) The Assistant Administrator for Lender Oversight who—

(A) shall have a minimum of 5 years experience in oversight of lending institutions before being appointed under this paragraph;

(B) shall carry out section 7(a) and assist the Administrator in carrying out section 23;

(C) shall be a career employee and may be an appointee in the Senior Executive Service; and

(D) shall report to the Associate Administrator for Capital Access.

(6) The Assistant Administrator for Congressional and Legislative Affairs who—

(A) shall have a minimum of 5 years experience as an employee reimbursed pursuant to the Senators' Clerk Hire Allowance Account established under section 1 of Public Law 100–137 (2 U.S.C. 58c) or the Members' Representational Allowance established under section 101 of the House of Representatives Administrative Reform Technical Corrections Act (2 U.S.C. 57b) or as an employee of a committee of the House or Senate (or in combination) before being appointed under this paragraph; and

(B) shall report directly to the Administrator.

(7) The Assistant Administrator for International Trade who—

(A) shall have a minimum of 5 years experience in international trade matters;

(B) shall carry out section 22;

(C) shall be a career employee and may be an appointee in the Senior Executive Service; and

(D) shall report to the Associate Administrator for Enterprise Training and Outreach.

(8) The Assistant Administrator for Women's Business Ownership who—

(A) shall carry out section 29;

(B) may be an appointee in the Senior Executive Service;

(C) shall report to the Associate Administrator for Enterprise Outreach and Training;

(D) shall advise the Administrator on appointments to the Women's Business Council;

(E) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

(F) serve as liaison for the National Women's Business Council; and

(G) oversee the implementation of the program established by section 8(m).

(e) GENERAL COUNSEL.—The Administrator shall appoint a General Counsel.

(f) REGIONAL OFFICES.—There are 10 regional offices each of which shall be administered by a regional administrator. Such offices shall have the same jurisdictions as the 10 Federal regions or such regions as are created by statute or by regulation of the Administrator of the General Services Administration.

(g) DISTRICT OFFICES.—

(1) ESTABLISHMENT.—The Administrator may establish district offices throughout the United States to provide services under this Act and the Small Business Investment Act of 1958.

(2) CLOSURE.—Except as provided in paragraph (3), the Administrator may close or combine district offices as the Administrator determines appropriate. The Administrator shall report any such closures to Congress.

(3) MINIMUM NUMBER.—Each State shall have at least one district office, except that one district office may serve Guam,

American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) DISTRICT DIRECTORS.—

(A) IN GENERAL.—Each district office shall have a director appointed by the Administrator whose salary shall not exceed the rate in effect for step 10 of GS–15 of the General Schedule. Each district director shall assist the Administrator in carrying out the programs established by this Act and the Small Business Investment Act of 1958.

(B) APPEAL OF DECISIONS.—The Administrator shall issue regulations providing procedures for the appeal of any decision made by any district director. Such regulations shall be codified in the Code of Federal Regulations.

(C) REVIEW AND REMOVAL.—The Administrator shall remove and replace any district director if such district director has failed, with respect to any year, to meet goals developed by the Administrator for increasing—

(i) the number of loans made pursuant to section 7 (other than section 7(b));

(ii) the number of participants in the programs established pursuant to section 8;

(iii) the amount Federal Government procurements from small business concerns or from any subcategory of small business concern referred to in section 15(g); or

(iv) the amount of dollar financings for small businesses under the Small Business Investment Act of 1958.

(D) REASSIGNMENT.—Any district director who is removed under subparagraph (C) shall be reassigned by the Administrator as a procurement center representative or a commercial marketing representative, as determined by the Administrator in consultation with the regional administrator. Any such reassignment shall, for the first year after reassignment, be at the same grade and salary.

(5) DISTRICT COUNSEL.—Each district office shall have a district counsel. Each district counsel shall—

(A) be assigned by, and report to, the General Counsel;

(B) provide legal assistance to the district director and employees in the district office; and

(C) carry out the required review of HUBZone firms specified in section 3.

(6) BUSINESS OPPORTUNITY SPECIALISTS.—Each district office shall have a minimum number of business opportunity specialists to ensure that effective guidance and oversight are provided to participants in the program established by section 8(a). The specialists shall assist the district director and Assistant Administrator for Minority Small Business and Capital Ownership Development. The majority of the hours worked by the business opportunity specialist shall be devoted to the programs established by section 8(a), unless the district director demonstrates to the Assistant Administrator for Minority Small Business and Capital Ownership Development that there are an insufficient number of firms certified pursuant to section 8(a) to require the employee to devote such hours to such programs.

(7) PROCUREMENT CENTER REPRESENTATIVES.—The Associate Administrator for Government Contracting and Minority Small Business, after consultation with the regional administrators and district directors, shall assign such procurement center representatives to district offices as the Associate Administrator determines to be appropriate. Any procurement center representative assigned to a district office or procuring agency activity shall report to the district director. The Associate Administrator shall assign at least one procurement center representative in each State.

(8) COMMERCIAL MARKETING REPRESENTATIVE.—The Associate Administrator for Government Contracting and Minority Small Business, after consultation with the regional administrators and district directors, shall assign commercial marketing representatives to district offices as the Associate Administrator determines to be appropriate. Any commercial marketing representative assigned to a district office shall report to the district director.

(h) GENERAL PERSONNEL AUTHORITY.—

(1) EXPERTS AND CONSULTANTS.—The Administrator may procure, for purposes of carrying out this Act and the Small Business Investment Act of 1958, temporary and intermittent services under section 3109(b) of title 5, United States Code.

(2) TRAVEL EXPENSES.—Each employee may, at the discretion of the Administrator, receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code. Notwithstanding such subchapter, the Administrator may pay the transportation expenses and per diem in lieu of subsistence expenses, for travel of any person employed by the Administration to render temporary services not in excess of 6 months in connection with any disaster referred to in section 7(b) from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment. The Administrator may extend the 6-month limitation for an additional 6 months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities.

(3) NOTARY PUBLIC EXPENSES.—The Administrator may pay the costs of any employee to qualify as a notary public.

(4) DELEGATIONS.—Except as otherwise provided in this Act or the Small Business Investment Act of 1958, the Administrator may delegate a function or responsibility to any employee of the Administration. The Administrator shall provide by regulation codified in the Code of Federal Regulations the procedures for determining which delegations are to be codified in the Code of Federal Regulations. With respect to any delegations not promulgated by regulation, the Administrator shall collect and collate such delegations and place them in a prominent location on the website maintained for the Administration.

(5) ADMINISTRATION WEB SITE.—Not later than 30 days after the enactment of this subsection, the Administrator shall redesign the web site of the Administration so that the delegations under paragraph (4) and the organizational chart of the Administration (including the names of the officials serving in

those capacities), links to the homepage of each office, and standard operating procedures, have a prominent link on the homepage of the Administration. Any subsequent redesign after compliance with this paragraph shall ensure that the information required by this paragraph maintains a prominent place on the homepage of the Administration.

SEC. 7. LOAN PROGRAMS.

(a) SMALL BUSINESS LOAN PROGRAM.—

(1) LOAN AUTHORITY.—The Administrator may, to the extent and in such amounts as provided in advance in appropriation Acts, make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital to any small business concern, including those owned by qualified Indian tribes for purposes of this Act.

(2) METHODS OF PARTICIPATION.—The Administrator may make such loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis, except that no immediate participation may be purchased unless it is shown that a deferred participation is not available and no direct financing may be made unless it is shown that a participation is not available.

(3) NO CREDIT ELSEWHERE.—The Administrator may not make a loan under this subsection if the applicant can obtain credit elsewhere.

(4) CRIMINAL BACKGROUND CHECK.—Before making any loan under this subsection or section 502 or 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(5) SOUND AND SECURE REQUIREMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, any loan made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

(B) SPECIAL RULES.—For purposes of subparagraph (A), any reasonable doubt regarding the likelihood of repayment shall be resolved in favor of the applicant if the applicant is—

(i) a disabled person (as defined in paragraph (8)); or

(ii) a small manufacturer.

(C) COLLATERAL.—The Administrator shall not refuse to make a loan under this subsection solely due to inadequate collateral, but a loan shall be secured as fully as possible with available assets. If the assets of the business are not sufficient to fully secure the loan, other assets of the owners of the small business concern may be taken as collateral to the extent the aggregate amount of collateral does not exceed the amount necessary to fully secure the loan.

(6) 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 Administrator 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 $150,000; or

(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to $150,000.

(B) REDUCED PARTICIPATION UPON REQUEST.—

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

(ii) PROHIBITION.—The Administrator 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) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14), such participation by the Administrator shall not exceed 90 percent.

(D) CERTAIN RURAL AREAS.—

(i) IN GENERAL.—In the case of a loan to a qualified rural small business concern, this paragraph shall be applied by substituting "90 percent" for—

(I) "75 percent" in subparagraph (A)(i); and

(II) "85 percent" in subparagraph (A)(ii).

(ii) QUALIFIED RURAL SMALL BUSINESS CONCERN.—For purposes of this subparagraph, the term "qualified rural small business concern" means a small business concern located in—

(I) a rural area (as defined in section 343(a)(13) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a))); and

(II) a district with respect to which the dollar value and number of loans made under this subsection are both less than the average for districts in the State.

(7) MAXIMUM LOAN AMOUNTS.—No loan shall be made under this subsection—

(A) if the total amount outstanding and committed (by participation or otherwise) solely for purposes of this subsection to the borrower would exceed $1,000,000 (or if the gross loan amount would exceed $2,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower would exceed $2,000,000 of which not more than $1,200,000 may be used for working

capital, supplies, or financings under paragraph (14) for export purposes; and

(C) if made either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed $350,000.

(8) INTEREST RATES.—

(A) MAXIMUM RATE SET BY ADMINISTRATOR.—Notwithstanding any State limitation on the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administrator.

(B) IMMEDIATE AND DIRECT LOANS.—The rate of interest for the Administrator's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest 1/8 of 1 percent, and an additional amount as determined by the Administrator, but not to exceed 1 percent per year.

(C) PREFERRED LENDERS PROGRAM.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program conducted pursuant to paragraph (31) shall not exceed the maximum interest rate, as determined by the Administrator, applicable to other loans guaranteed under this subsection.

(D) DISABLED PERSONS.—

(i) IN GENERAL.—The maximum interest rate for a loan made under this subsection to a disabled person for the establishment, acquisition or operation of a small business concern shall be 3 percent per year.

(ii) DISABLED PERSON.—For the purposes of this subparagraph, the term "disabled person" means any individual who—

(I) is a service-disabled veteran; or

(II) has a disability (as defined in section 3 of the Americans with Disabilities Act of 1990) which limits such individual's selection of any type of employment for which such individual would otherwise be qualified or qualifiable.

(9) PREPAYMENT CHARGES.—

(A) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administrator a subsidy recoupment fee calculated in accordance with subparagraph (B) if—

(i) the loan is for a term of not less than 15 years;

(ii) the prepayment is voluntary;

(iii) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

(iv) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(B) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under subparagraph (A) shall be—

(i) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

(ii) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

(iii) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

(10) MAXIMUM TERM.—No loans made under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding 25 years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of 25 years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(11) CONSTRUCTION AND REHABILITATION OF REAL PROPERTY.—The Administrator may make a loan under this subsection to finance residential or commercial construction or rehabilitation for sale if such loan is not used primarily for the acquisition of land.

(12) UNEMPLOYED AND LOW-INCOME INDIVIDUALS.—The Administrator may make loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern, if the Administrator determines that such loan will further the policies established in section 2, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(13) STATE AND LOCAL DEVELOPMENT COMPANIES.—The Administrator may make loans under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

(14) EXPORT WORKING CAPITAL PROGRAM.—

(A) IN GENERAL.—The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets.

(B) INTEREST RATES.—A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(C) CRITERIA FOR LOANS.—When considering loan or guarantee applications, the Administrator shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including small manufacturers and agricultural concerns, in the export market.

(D) MARKETING.—The Administrator shall aggressively market its export financing program to small businesses.

(15) QUALIFIED EMPLOYEE TRUSTS.—

(A) LOAN GUARANTEES.—The Administrator may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 percent of the stock of the concern. A qualified employee trust shall be eligible for any loan guarantee under this subsection with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(B) APPROVAL OF PLAN.—The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administrator by the trustee of such trust with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1986, at least 51 percent of the total stock of such concern shall be allocated to the accounts of at least 51 percent of the employees of such concern who are entitled to share in such allocation;

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

(iii) there will be adequate management to assure management expertise and continuity.

(C) CERTAIN CHARACTERISTICS OF EMPLOYEE-OWNERS DISREGARDED.—In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except that the business experience of employee-owners who assume managerial responsibilities may be considered.

(D) CERTAIN CORPORATIONS TREATED AS SMALL BUSINESS CONCERNS.—For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

(16) INTERNATIONAL TRADE.—

(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern in an industry engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern in—

(i) the financing of the acquisition, construction, renovation, modernization, improvement or expansion of

productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

(ii) the refinancing of existing indebtedness which is not structured with reasonable terms and conditions.

(B) SECURITY.—Each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the concern.

(C) ENGAGED IN OR ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern shall be considered to be engaged in or adversely affected by international trade if such concern is determined by the Administrator (under regulations prescribed by the Administrator to be—

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

(ii) adversely affected by import competition in that it—

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

(II) can demonstrate injury attributable to such competition.

(D) FINDINGS BY INTERNATIONAL TRADE COMMISSION.—For purposes of subparagraph (C)(ii)(II), the Administrator shall accept any finding of injury by the International Trade Commission.

(17) AUTHORIZED LENDING INSTITUTIONS.—The Administrator shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, but which may be collected in advance by the lender from the borrower, as follows:

(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(19) CERTIFIED LENDERS PROGRAM.—

(A) IN GENERAL.— There is a Certified Lenders Program for lenders who establish their knowledge of laws and regulations concerning the guaranteed loan program and their

proficiency in program requirements as set forth in regulations codified in the Code of Federal Regulations.

(B) SUSPENSION AND REVOCATION OF DESIGNATION.—The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administrator determines that the lender is not adhering to established rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(C) AUTHORITY TO LIQUIDATE LOANS.—

(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administrator pursuant to a liquidation plan approved by the Administrator.

(ii) AUTOMATIC APPROVAL.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

(20) MINORITY BUSINESS DEVELOPMENT PROGRAM PARTICIPANTS.—

(A) IN GENERAL.—The Administrator may make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under section 8(a). Such assistance may be provided only if the Administrator determines that—

(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

(B) MAXIMUM AMOUNT OF LOANS.—No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

(C) MINIMUM PARTICIPATION.—Subject to the limitation of subparagraph (B), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administrator shall be not less than 85 percent of the balance of the financing outstanding at the time of disbursement.

(D) INTEREST RATE.—The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(E) METHODS OF PARTICIPATION.—No immediate participation may be purchased under this paragraph unless it is shown that a deferred participation is not available. No direct financing may be made under this paragraph unless it is shown that a participation is unavailable. A direct loan or the Administrator's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

(i) that is subordinated by its terms to all other borrowings of the issuer;

(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest 1/8 of 1 percent;

(iii) the term of which is not more than 25 years;

(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administrator; and

(v) the interest on which is payable not less often than annually.

(21) CLOSURE OF DOD INSTALLATIONS.—

(A) IN GENERAL.—The Administrator may make loans on a guaranteed basis under the authority of this subsection—

(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(I) the closure (or substantial reduction) of a Department of Defense installation; or

(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

(B) REASONABLE DOUBT GIVEN TO APPLICANT.—Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (5).

(C) AUTHORIZATION.—Loans pursuant to this paragraph shall be authorized in such amounts as provided in ad-

vance in appropriation Acts for the purposes of loans under this paragraph.

(D) QUALIFIED INDIVIDUAL.—For purposes of this paragraph a qualified individual is—

(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

(E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administrator shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

(i) have the greatest potential for—

(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

(22) LATE FEES.—The Administrator may permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

(23) ANNUAL FEE.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administrator shall, in accordance with such terms and procedures as the Administrator shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.

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

(C) AGENTS.—The Administrator may contract with any agent to carry out, on behalf of the Administrator, the assessment and collection of annual fees referred to in subparagraph (A). Such agent may receive as compensation for services any interest earned on the fees while in such agent's control and prior to the time when the agent, pursuant to contract, is required to remit the fees to the Administrator.

(24) NOTIFICATION REQUIREMENT.—The Administrator shall notify the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection, including the establishment of any pilot project pursuant to paragraph (25).

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) LIMITATION ON NUMBER.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after January 1, 1994.

(B) DOLLAR LIMITATIONS.—

(i) IN GENERAL.—In the case of any pilot program established on or after the date of the enactment of this subparagraph, no loan shall be made under such program if such loan would result in the total amount of loans made during the fiscal year under all such programs to be in excess of 5 percent of the total amount of loans guaranteed in such fiscal year under this subsection.

(ii) CERTAIN PRE-EXISTING PROGRAMS.—In the case of any pilot program established before the date of the enactment of this subparagraph, no loan shall be made under such program if such loan would result in the total amount of loans made during the fiscal year under all such programs to be in excess of 15 percent of the total amount of loans guaranteed in such fiscal year under this subsection.

(C) MAXIMUM TERM.—The duration of any pilot program authorized by this paragraph shall not exceed 3 years. For purposes of this subparagraph, a pilot program shall not be treated as a new pilot program solely on the basis of a modification or change in a pilot program, including the change of its name. With respect to any pilot program in existence on the date of the enactment of this subparagraph, this subparagraph shall apply without regard to any period ending before such date.

(D) REGULATIONS.—With respect to each pilot program under this subsection, the Administrator shall—

(i) promulgate regulations for such program pursuant to section 553(b) of title 5, United States Code;

(ii) provide not less than 60 days for notice and comment on such regulations; and

(iii) ensure that such regulations are codified in the Code of Federal Regulations.

In the case of any pilot program established after the date of the enactment of this subparagraph, such program shall not go into effect until after the requirements of this subparagraph are satisfied.

(E) PILOT PROGRAM.—For purposes of this paragraph, the term "pilot program" means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

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

(27) LOW DOCUMENTATION LOAN PROGRAM.—

(A) IN GENERAL.—The Administrator may issue guarantees under this subsection for loans of $150,000 or less with less documentation than would otherwise be required by the Administrator under this subsection.

(B) REGULATIONS.—Not later than 120 days after the date of the enactment of this paragraph, the Administrator shall promulgate regulations to carry out the provisions of this paragraph after the opportunity for notice and comment pursuant to section 553(b) of title 5, United States Code. Such regulations shall be codified in the Code of Federal Regulations.

(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administrator, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

(A) shall be required by the Administrator in connection with any such loan for more than $250,000; or

(B) may be required by the Administrator or the lender in connection with any such loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(31) PREFERRED LENDERS PROGRAM.—

(A) IN GENERAL.—There is a Preferred Lenders Program.

(B) PARTICIPATION.—The Administrator may designate a preferred lender under this paragraph only if the lender

demonstrates knowledge of the Small Business Act and the regulations promulgated thereunder and establishes to the satisfaction of the Administrator that it—

(i) has the ability to process, close, service, and liquidate loans;

(ii) has the ability to develop and analyze complete loan packages; and

(iii) has a satisfactory performance history of participation in the lending program established under this subsection as demonstrated by a default rate that does not exceed—

(I) the national average; or

(II) in the case any lender which made at least 20 percent of its loans in Alaska, Hawaii, State-designated enterprise zones, enterprise zones, empowerment zones, enterprise communities, or labor surplus areas as determined by the Department of Labor, or to small manufacturers, the national average plus 2 percentage points.

(C) DELEGATED AUTHORITY.—With respect to loans made under this subsection, preferred lenders shall, without prior approval of the Administrator:

(i) Determine creditworthiness and eligibility.

(ii) Make and close loans with a guarantee from the Administrator.

(iii) Monitor loan performance.

(iv) Service and collect the loans.

(v) Foreclose and liquidate loans.

(D) PROHIBITED ACTIVITIES.—A preferred lender shall not take any action that creates an actual or apparent conflict of interest or places the Federal Government's guarantee at significant risk beyond the risk associated with loan nonperformance.

(E) AREA OF OPERATIONS.—The designation by the Administrator of a lender to participate in the program established pursuant to this paragraph shall authorize the activities described in subparagraph (C) only with respect to small business concerns located in areas served by such office or offices as the Administrator designates with respect to such lender.

(F) DESIGNATION AS NATIONAL PREFERRED LENDERS.—The Administrator, upon application, may designate a preferred lender as a national preferred lender. A national preferred lender may conduct the activities described in subparagraph (C) with respect to each area served by an office of the Administrator. The Administrator shall not grant such designation unless the applicant demonstrates—

(i) operation as a preferred lender in at least 5 States or within the territory served by at least 10 offices of the Administrator for a period of not less than 3 years;

(ii) issuance of a minimum of 50 loans per year as a preferred lender;

(iii) centralization of approval, loan servicing and liquidation functions that meet such standards as the Administrator may establish by regulations, which are

promulgated after notice and the opportunity for public comment not later than 180 days after the date of the enactment of this clause;

(iv) maintenance of uniform written policies and procedures on the issuance of loans guaranteed under this subsection;

(v) maintenance of a portfolio of loans guaranteed under this subsection that do not exceed the national average default, currency, and recovery rates for preferred lenders; and

(vi) receipt of a substantially satisfactory compliance review rating from the Administrator in its most recent audit and examination as a preferred lender and a small business lending company, if applicable, or has received a substantially satisfactory rating as a result of a follow-up review.

(G) CORRECTIVE ACTION.—If a national preferred lender is deficient with respect to any requirement described in subparagraph (F), the Administrator shall notify such lender in writing and shall provide the lender a reasonable period of time to conform to such requirements before taking any corrective action.

(H) SUSPENSION OR REVOCATION.—The Administrator may, depending upon the severity of the failure to comply with the standards set forth in this paragraph, suspend or revoke a lender's status as a preferred lender or a national preferred lender. Any such suspension or revocation shall not affect any outstanding guarantee.

(I) LIMITATION ON DELEGATION.—No authority under this paragraph may be delegated to any employee of the Administration who is based in a regional or district office.

(32) SIMPLIFIED FORM FOR SMALL GUARANTEES.—The Administrator shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for loans of $50,000 or less in guarantees to eligible applicants.

(33) SPECIAL RULE ON AFFILIATION.—A business concern applying for assistance under this subsection shall be considered small for purposes of this subsection without regard to affiliation with another business concern if the applicant has no legal recourse to have its affiliate repay any of its debt obligations.

(b) DISASTER LOAN PROGRAM.—

(1) PHYSICAL LOSS DISASTER LOANS.—

(A) LOAN AUTHORITY.—Except as to agricultural enterprises, the Administrator may, to the extent and in such amounts as provided in advance in appropriation Acts, make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administrator may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters.

(B) LOAN AMOUNT.—The amount of any loan made under this paragraph shall be equal to 100 percent of the loss except that the amount of the loan shall be reduced by—

(i) any amount covered by insurance or otherwise; or

(ii) in the case of a loan used to refinance a mortgage or other lien, any amount covered by insurance or otherwise.

(C) SPECIAL RULES.—The Administrator shall not—

(i) reduce the loan amount on real estate to below $100,000 unless the amount of loss calculated under subparagraph (B) is less than $100,000;

(ii) reduce the loan amount on personal property, whether held by a homeowner or lessee, to below $20,000, unless the amount of the loss calculated under subparagraph (B) is less than $20,000;

(iii) take into account for purposes of subparagraph (B) any sums made available for refinancing pursuant to subparagraph (D); or

(iv) require collateral for loans of $10,000 or less.

(D) REFINANCINGS.—Such loans may be used to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern except that the Administrator shall not make any loan or guarantee under this paragraph unless the Administrator finds—

(i) the applicant is not able to obtain credit elsewhere;

(ii) such property is to be repaired, rehabilitated, or replaced; and

(iii) the amount refinanced shall not exceed the amount of physical loss sustained.

(E) INCREASE FOR MITIGATING MEASURES.—The Administrator may increase the amount of any loan under this subsection by up to an additional 20 percent if he determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including construction of retaining walls and sea walls, grading and contouring land, relocating utilities and modifying structures.

(2) ECONOMIC INJURY DISASTER LOANS.—

(A) LOAN AUTHORITY.—Except as to agricultural enterprises (other than small agricultural cooperatives), the Administrator may, to the extent and in such amounts as provided in advance in appropriation Acts, make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis as the Administrator may determine to be necessary or appropriate to any small business concern or small agricultural cooperative located in an area affected by a disaster (which shall include all of the county in which the disaster occurred and counties contiguous to the county of the disaster as determined by the President or Administrator), if the Administrator determines that the concern or the cooperative has suffered a

substantial economic injury as a result of such disaster and if such disaster constitutes—

(i) a major disaster, as determined by the President under the Disaster Relief and Emergency Assistance Act; or

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

(iii) a disaster, as determined by the Administrator.

(B) STATE CERTIFICATION.—If no disaster declaration has been issued under subparagraph (A), the Governor of a State in which a disaster has occurred may certify to the Administrator that small business concerns or small agricultural cooperatives have suffered economic injury as a result of such disaster and are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administrator may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

(C) UNABLE TO OBTAIN CREDIT ELSEWHERE.—No loan or guarantee shall be extended pursuant to this paragraph unless the Administrator finds that the applicant is not able to obtain credit elsewhere.

(3) ESSENTIAL EMPLOYEES CALLED TO ACTIVE DUTY.—

(A) DEFINITIONS.—For purposes of this paragraph:

(i) ESSENTIAL EMPLOYEE.—The term "essential employee" means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

(ii) PERIOD OF MILITARY CONFLICT.—The term "period of military conflict" has the meaning given the term in subsection (n)(1).

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

(I) to meet its obligations as they mature;

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) LOAN AUTHORITY.—The Administrator may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

(C) PERIOD OF ELIGIBILITY.—A small business concern described in subparagraph (B) shall be eligible to apply for

assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 90 days after the date on which such essential employee is discharged or released from active duty.

(D) INTEREST RATE.—Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury disaster loans under paragraph (2).

(E) MAXIMUM LOAN AMOUNT.—No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $1,500,000, unless the applicant can establish pursuant to regulations promulgated by the Administrator pursuant to paragraph (9) that this maximum should be waived.

(F) NO DISASTER DECLARATION REQUIRED.—For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

(4) SPECIAL RULE TO DETERMINE SMALL CONCERNS.—For purposes of this subsection, a business concern and an agricultural cooperative are considered small if the business concern or agricultural cooperative has 500 or fewer employees.

(5) MAXIMUM TERM.— Except as provided in paragraph (6), no loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding 30 years. No loan described in paragraph (11)(D)(iii) shall be made for a period or periods exceeding 3 years.

(6) SUSPENSION OF PAYMENTS.—

(A) IN GENERAL.—The Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period of not to exceed 5 years, if—

(i) the borrower under such loan is a homeowner or a small business concern;

(ii) the loan was made to enable—

(I) such homeowner to repair or replace his home; or

(II) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster described in clause (i) or (ii) of paragraph (2)(A); and

(iii) the Administrator determines such action is necessary to avoid severe financial hardship.

(B) PURCHASE OF NON-FEDERAL SHARE.—During any period in which principal and interest charges are suspended on the Federal share of any loan under this paragraph, the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such

loan. No such payments shall be made by the Administrator in behalf of any borrower unless—

(i) the Administrator determines that such action is necessary in order to avoid a default; and

(ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this clause.

(7) ADDITIONAL DISASTER AREAS.—The Administrator shall promulgate regulations for determining under what circumstances loans can be made under paragraph (2)(A) in counties beyond the counties designated pursuant to clause (i), (ii), or (iii) of paragraph (2)(A).

(8) CIVIL PENALTY FOR MISUSE OF LOAN.—Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to 150 percent of the original principal amount of the loan.

(9) MAXIMUM LOAN AMOUNT.—The Administrator shall establish by regulation the maximum amount of indebtedness which may be committed to any borrower under this subsection. Such regulation shall be codified in the Code of Federal Regulations and shall specify the conditions under which the Administrator shall waive any such maximum based on the need to speed economic recovery of the region.

(10) MAXIMUM GUARANTEED PARTICIPATION.—In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administrator shall not be in excess of 90 percent of the balance of the loan outstanding at the time of disbursement.

(11) INTEREST RATE.—The interest rate on the Federal share of any loan made under paragraph (1) or (2) shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster but shall otherwise be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than ½ the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 percent per year as determined by the Administrator, and adjusted to the nearest ⅛ of 1 percent, but not to exceed 4 percent per year;

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

mined by the Administrator, and adjusted to the nearest 1/8 of 1 percent, but not to exceed 8 percent per year;

(C) in the case of a business or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 percent per year; or

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not to excess of the lowest of—

(i) the rate prevailing in the private market for similar loans,

(ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a), or

(iii) 8 percent per year.

(12) NOTICE TO BORROWERS.—

(A) IN GENERAL.—The Administrator shall ensure that each borrower under this subsection receives a notice described in subparagraph (B) upon applying for any loan under this subsection and upon the disbursement of any loan under this subsection.

(B) CONTENTS OF NOTICE.—A notice is described in this subparagraph if such notice includes the following information with respect to loans made under this subsection:

(i) A description of the collection practices of the Administration for such loans, including a description of any actions the Administrator may take to collect a delinquent or non-current loan.

(ii) A description of the practices of the Administration with respect to selling the rights and interests of the Administration in such loans, including a description of the effects of such a sale on the borrower.

(iii) A description of the rights of the borrower with respect to such loan under applicable Federal laws.

(iv) A telephone number for contacting the Administrator regarding such loan.

(c) EXTENSION OR RENEWAL.—

(1) IN GENERAL.—The Administrator may further extend the maturity of or renew any loan made pursuant to this section for additional periods not to exceed 10 years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) LIMITATION.—No loan made under subsection (b) shall be extended under this subsection if the loan has a maturity in excess of 20 years.

(d) [RESERVED].

(e) [RESERVED].

* * * * * * *

[(h)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

[(A) to assist any public or private organization—

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

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

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

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

[(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

[(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.]

(h) [RESERVED].

* * * * * * *

[(j)(1) the Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designated to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

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

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

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

[(C) the furnishing of centralized services with regard to public services and Federal Government programs including

programs authorized under sections 7(i), (7)(j)(10), and 8(a) of this Act;

[(D) the establishment and strengthening of business service agencies, including trade associations and cooperative; and

[(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

[(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in area of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under section 7(i), 7(j), and 8(a), of this Act.

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

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

[(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

[(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

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

[(10) There is established with the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

[(A) The Program shall—

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

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

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

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

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

[(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

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

[(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

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

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

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

[(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (here-

inafter referred to as the plan") as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

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

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

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

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

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

[(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

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

taining business activity from sources other than contracts awarded pursuant to section 8(a).

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

[(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a),

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

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

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

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

[(i) voluntarily elects not to continue participation;

[(ii) completes the period of Program participation as prescribed by paragraph (15);

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

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

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

[(i) the failure by such concern to maintain its eligibility for Program participation;

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

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

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

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

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

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

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

[(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as "business activity targets."). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

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

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

[(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to sec-

tion 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

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

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

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

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

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

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

[(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to ob-

tain, a substantial unfair competitive advantage within an industry category.

[(III) Any joint venture established under the authority of section 602(b) of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988", shall be eligible for award of a contract pursuant to section 8(a).

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

[(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

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

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

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

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

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

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

[(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the Division") that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

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

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

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

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

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

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

[(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

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

[(vii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

[(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

[(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

[(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

[(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

[(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Spe-

cialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

[(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

[(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

[(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

[(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

[(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

[(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

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

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

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

[(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled "An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8)(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

[(D) A maximum of five exemptions from the requirements of the Act entitled "An Act requiring contracts for the construction, alteration and repair of any public building or public work

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

[(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

[(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

[(iii) the contract to which it pertains does not exceed $3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

[(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term "training provider" shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

[(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

[(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

[(iii) no more than $2,500 shall be made available for any one employee or potential employee;

[(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

[(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

[(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

[(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

[(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

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

[(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

[(I) Transitional management business planning training and technical assistance.

[(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

[(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

[(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

[(A) no more than four years may be spent in the developmental stage of Program Participation; and

[(B) no more than five years may be spent in the transitional stage of Program Participation.

[(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

[(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

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

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

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

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

ceived pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

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

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

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

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

[(k) In carrying out its functions under subsections 7(i), 7(j), and 8(a) of this Act, the Administration is authorized—

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

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

[(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 655(b)); and

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

(j) [RESERVED].

(k) [RESERVED].

(l) [RESERVED].

[(m) MICROLOAN PROGRAM.—

[(1)(A) PURPOSES.—The purposes of the Microloan Program are—

[(i) to assist women, low-income, veteran (within the meaning of such term under section 3(q)), and minority entrepreneurs and business owners and other individuals

possessing the capability to operate successful business concerns;

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

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

[(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than $10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

[(II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

[(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and

[(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

[(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

[(I) establishing small businesses; and

[(II) eliminating their dependence on that assistance.

[(B) ESTABLISHMENT.—There is established a microloan program, under which the Administration may—

[(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

[(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

[(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed $35,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

[(2) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it—

[(A) meets the definition in paragraph (10); and

[(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

[(3) LOANS TO INTERMEDIARIES.—

[(A) INTERMEDIARY APPLICATIONS.—(i) IN GENERAL.—As part of its application for a loan, each intermediary shall submit a description to the Administration of—

[(I) the type of businesses to be assisted;

[(II) the size and range of loans to be made;

[(III) the geographic area to be served and its economic, proverty, and unemployment characteristics;

[(IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

[(V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

[(VI) the local economic credit markets, including the costs associated with obtaining credit locally;

[(VII) the qualifications of the applicant to carry out the purpose of this subsection; and

[(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

[(ii) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than $10,000.

[(B) INTERMEDIARY CONTRIBUTION.—As a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administration shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

[(C) LOAN LIMITS.—Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result

of such loan, exceed $750,000 in the first year of such intermediary's participation in the program, and $3,500,000 in the remaining years of the intermediary's participation in the program.

[(D)(i) IN GENERAL.—The Administrator shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid.

[(ii) LEVEL OF LOAN LOSS RESERVE FUND.—

[(I) IN GENERAL.—Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

[(II) REVIEW OF LOAN LOSS RESERVE.—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

[(III) REDUCTION OF LOAN LOSS RESERVE.—Subject to the requirements of clause IV, the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

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

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

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

[(E) UNAVAILABILITY OF COMPARABLE CREDIT.—An intermediary may make a loan under this subsection of more than $20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than $35,000, or have outstanding or committed to any 1 borrower more than $35,000.

[(F) LOAN DURATION; INTEREST RATES.—

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

[(ii) APPLICABLE INTEREST RATES.—Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

[(iii) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than $7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

[(iv) RATES APPLICABLE TO MULTIPLE SITES OR OFFICES.—The interest rate prescribed in clause (ii) or (iii) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

[(v) RATE BASIS.—The applicable rate of interest under this paragraph shall—

[(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

[(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

[(vii) COVERED INTERMEDIARIES.—The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

[(G) DELAYED PAYMENTS.—The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

[(H) FEES; COLLATERAL.—Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

[(4) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

[(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

[(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), except for a grant made to an intermediary that provides not less than 50 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area, the Administration shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

[(C) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

[(i) IN GENERAL.—In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

[(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

[(II) the intermediary has a portfolio of loans made under this subsection that averages not more than $10,000 during the period of the intermediary's participation in the program.

[(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

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

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

[(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

[(i) IN GENERAL.—Each intermediary may expend an amount not to exceed 25 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business con-

cerns that are prospective borrowers under this subsection.

[(ii) TECHNICAL ASSISTANCE.—An intermediary may expend not more than 25 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

[(F) SUPPLEMENTAL GRANT.—

[(i) IN GENERAL.—The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries and technical assistance providers under paragraph (5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

[(ii) ELIGIBLE RECIPIENTS; GRANT AMOUNTS.—In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed $200,000 per year.

[(iii) USE OF GRANT AMOUNTS.—Grants under this subparagraph—

[(I) are in addition to other grants provided under this subsection and shall not require the contribution of matching amounts as a condition of eligibility; and

[(II) may be used by a grantee—

[(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) or under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

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

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

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

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

[(5) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS.—Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

[(A) GRANT AMOUNTS.—Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each in amounts not to exceed $200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

[(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

[(6) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

[(A) IN GENERAL.—An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

[(B) PORTFOLIO REQUIREMENT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than $15,000.

[(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

[(i) in the case of a loan of more than $7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

[(ii) in the case of a loan of not more than $7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

[(D) REVIEW RESTRICTION.—The Administration shall not review individual microloans made by intermediaries prior to approval.

[(E) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small businesses

concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

[(7) PROGRAM FUNDING FOR MICROLOANS.—

[(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

[(B) ALLOCATION.—

[(i) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

[(I) the lesser of—

[(aa) $800,000; or

[(bb) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

[(II) any additional amount, as determined by the Administration.

[(ii) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

[(8) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

[(9) GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES.—

[(A) IN GENERAL.—The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

[(B) ASSISTANCE AMOUNT.—The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific pur-

pose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing. to achieve the purpose set forth in subparagraph (A).

[(C) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

[(10) REPORT TO CONGRESS.—On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3½ years of the microloan program and the following:

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

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

[(C) a description of the matching contributions of each intermediary;

[(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

[(E) the repayment history of each intermediary;

[(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

[(G) any recommendations for legislative changes that would improve program operations.

[(11) DEFINITIONS.—For purposes of this subsection—

[(A) the term "intermediary" means—

[(i) a private, nonprofit entity;

[(ii) a private, nonprofit community development corporation;

[(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

[(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

[(I) no application is received from an eligible nonprofit organization; or

[(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

[(v) an agency of or nonprofit entity established by a Native American Tribal Government,

that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;

[(B) the term "microloan" means a short-term, fixed rate loan of not more than $35,000, made by an intermediary to a startup, newly established, or growing small business concern;

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

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

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

[(D) the term "economically distressed area", as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.

[(12) DEFERRED PARTICIPATION LOAN PILOT.—In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or nonprofit entity or by alliances of such entities, subject to the following conditions:

[(A) NUMBER OF LOANS.—In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

[(B) TERM OF LOANS.—The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

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

[(13) EVALUATION OF WELFARE-TO-WORK MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F).]

(m) MICROLOAN PROGRAM.—

(1) PURPOSES.—The purposes of the Microloan Program are—

(A) to assist women, low-income, veteran, and minority entrepreneurs and business owners, small manufacturers, and other individuals possessing the capability to operate successful business concerns;

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

(C) to establish a microloan program to be administered by the Administrator—

(i) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than $10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(ii) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(iii) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees;

(iv) to report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(v) to establish a welfare-to-entrepreneurship microloan initiative, which shall be administered by the Administrator, in order to test the feasibility of supplementing the technical assistance grants provided under this subsection to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in establishing small businesses and eliminating their dependence on that assistance.

(2) ESTABLISHMENT.—There is a Microloan Program, under which the Administrator may, consistent with the requirements of this subsection—

(A) make direct loans to eligible intermediaries for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns;

(B) in conjunction with such loans make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small

business concerns that are borrowers under this subsection; and

(C) make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed $50,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(3) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B) and (C) of paragraph (2) if it has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers or equivalent experience, as determined by the Administrator provided that the equivalent experience evidences the capability of the intermediary to assist microloan borrowers.

(4) INTERMEDIARY APPLICATIONS.—As part of its application for a loan, each intermediary shall submit a description to the Administrator of—

(A) the type of businesses to be assisted;

(B) the size and range of loans to be made;

(C) the geographic area to be served and its economic, poverty, and unemployment characteristics;

(D) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

(E) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

(F) the local economic credit markets, including the costs associated with obtaining credit locally;

(G) the qualifications of the applicant to carry out the purpose of this subsection; and

(H) any plan to involve other technical assistance providers (such as volunteers recruited under section 12(b) or counselors from small business development centers) or private sector lenders in assisting selected business concerns.

(5) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the program established under this subsection, the Administrator shall give priority to those applicants that provide loans in amounts averaging not more than $10,000 and to those applicants that primarily serve small manufacturers.

(6) INTERMEDIARY CONTRIBUTION.—As a condition of any loan made to an intermediary under this subsection, the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

(7) LOANS TO INTERMEDIARIES.—

(A) LOAN LIMITS.—No loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the

business loan and investment fund established by this Act would, as a result of such loan, exceed $750,000 in the first year of such intermediary's participation in the program, and $3,500,000 in the remaining years of the intermediary's participation in the program.

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

(C) DELAYED PAYMENTS.—The Administrator shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

(D) FEES; COLLATERAL.—Except as otherwise provided in this subsection, the Administrator shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

(E) INTEREST RATES.—

(i) IN GENERAL.—Loans made by the Administrator under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest 1/8 of 1 percent.

(ii) CERTAIN SMALL LOANS.—Notwithstanding clause (i), loans made by the Administrator to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than $10,000, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest 1/8 of 1 percent.

(iii) MULTIPLE SITES OR OFFICES.—Clause (ii) shall apply to each separate loan-making site or office of an intermediary only if such site or office meets the requirements of that clause.

(iv) RATE BASIS.—The applicable rate of interest under this subparagraph shall—

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administrator prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(8) LOSS RESERVE OF INTERMEDIARIES.—

(A) IN GENERAL.—The Administrator shall, by regulation to be codified in the Code of Federal Regulations, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administrator under this subsection are repaid.

(B) AMOUNT OF RESERVE FUND.—The Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

(C) REDUCTION OF REQUIRED AMOUNT.—Notwithstanding subparagraph (B), the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary. The Administrator may reduce the annual loan loss reserve requirement of an intermediary under this subparagraph only if the intermediary demonstrates to the satisfaction of the Administrator that—

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

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

(D) REVIEW BY ADMINISTRATOR.—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(9) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.—

(A) IN GENERAL.—An eligible intermediary shall make fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under paragraph (7) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) LOAN AMOUNT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than $15,000. An intermediary may make a loan under this subsection of more than $20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than $50,000, or have outstanding or committed to any 1 borrower more than $50,000.

(C) INTEREST LIMIT.—Notwithstanding any State limitation on the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this

subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administrator—

(i) in the case of a loan of more than $10,000 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than $10,000 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) REVIEW RESTRICTION.—The Administrator shall not review individual microloans made by intermediaries prior to approval.

(E) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(10) PROGRAM FUNDING FOR MICROLOANS.—

(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administrator may fund, on a competitive basis, not more than 300 intermediaries.

(B) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administrator shall make available for award in each State an amount equal to the sum of—

(i) the lesser of—

(I) $800,000; or

(II) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(ii) any additional amount, as determined by the Administrator.

(C) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administrator determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under subparagraph (B) during that fiscal year, the Administrator may make that portion available for award in any one or more States without regard to subparagraph (B).

(11) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administrator shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

(12) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—The Administrator may make grants described in paragraph (2)(B) in accordance with the following requirements:

(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under this subsection

shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(C) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

(i) IN GENERAL.—Each intermediary that has a portfolio of loans made under this subsection that averages not more than $10,000 during the period of the intermediary's participation in the program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection, in addition to grants made under subparagraph (A).

(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

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

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

(E) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—Each intermediary may expend grant funds received under this subsection to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection and may enter into contracts with third parties to provide such information and assistance.

(13) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS.—Grants described in paragraph (2)(C) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Subject to the requirements of subparagraph (B), the Administrator may make not more than 55 grants annually, each in amounts not to exceed $200,000 for the purposes specified in paragraph (2)(C).

(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), the Administrator shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct fund-

ing, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(14) GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES.—

(A) IN GENERAL.—The Administrator may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

(B) ASSISTANCE AMOUNT.—The Administrator shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing to achieve the purpose set forth in subparagraph (A).

(C) WELFARE-TO-ENTREPRENEURSHIP MICROLOAN INITIATIVE.—Of amounts made available to carry out the welfare-to-entrepreneurship microloan initiative in any fiscal year, the Administrator may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-entrepreneurship microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-entrepreneurship transition, and other related issues, to operate a successful welfare-to-entrepreneurship microloan initiative.

(15) EVALUATION OF WELFARE-TO-ENTREPRENEURSHIP MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the welfare-to-entrepreneurship microloan initiative, including a description of the amounts made available to carry out such initiative.

(16) DEFINITIONS.—For purposes of this subsection—

(A) INTERMEDIARY.—The term "intermediary" means—

(i) a private, nonprofit entity;

(ii) a private, nonprofit community development corporation;

(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

(I) no application is received from an eligible nonprofit organization; or

(II) the Administrator determines that the needs of a region or geographic area are not adequately

served by an existing, eligible nonprofit organization that has submitted an application; or

(v) an agency of or nonprofit entity established by a Native American Tribal Government, that seeks to borrow or has borrowed funds from the Administrator to make microloans to small business concerns under this subsection.

(B) MICROLOAN.—The term "microloan" means a fixed rate loan of not more than $50,000, made by an intermediary to a startup, newly established, or growing small business concern.

(C) RURAL AREA.—The term "rural area" means any political subdivision or unincorporated area—

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

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

* * * * * * *

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

[(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by

such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

[(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

[(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

[(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

[(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

[(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

[(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

[(II) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

[(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

[(2) Notwithstanding subsections (a) and (c) of the first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the

United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work," approved August 24, 1935 (49 Stat. 793), no small business concern shall be required to provide any amount of any bond as a condition or receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided,* That the Administrator shall exercise the authority granted by the paragraph only if—

[(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

[(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

[(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

[(D) that small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

[(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

[(B)(i) For purposes of paragraph (1) a "fair market price" shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

[(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

[(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

[(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

[(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

[(4)(A) For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern which meets the requirements of subparagraph (B) and—

[(i) which is at least 51 per centum unconditionally owned by—

[(I) one or more socially and economically disadvantaged individuals,

[(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

[(III) an economically disadvantaged Native Hawaiian organization, or

[(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

[(I) one or more socially and economically disadvantaged individuals,

[(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

[(III) an economically disadvantaged Native Hawaiian organization.

[(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

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

[(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

[(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

[(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

[(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

[(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business

area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

[(B) Each Program Participant shall annually submit to the Administration—

[(i) a personal financial statement for each disadvantaged owner;

[(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

[(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

[(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

[(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(10)(G) subject to the right to a hearing as provided for under paragraph (9).

[(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

[(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

[(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

[(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

[(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

[(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

[(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

[(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

[(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

[(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

[(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

[(B) The actions referred to in subparagraph (A) are—

[(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

[(ii) a termination pursuant to section 7(j)(10)(F);

[(iii) a graduation pursuant to section 7(j)(10)(G); and

[(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

[(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

[(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

[(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

[(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

[(ii) is untimely filed;

[(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

[(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

[(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

[(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

[(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

[(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

[(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

[(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year 1988, or in any succeeding fiscal year,

shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

[(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

[(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

[(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

[(iv) The activity responsible for the award and administration of the contract.

[(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

[(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

[(ii) the Administrator.

[(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

[(F) Such forecasts shall be available to small business concerns.

[(13) For purposes of this subsection, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

[(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

[(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

[(14)(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

[(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

[(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

[(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 15(o).

[(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 15(o) for the same industry category.

[(15) For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which—

[(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

[(B) is controlled by Native Hawaiians, and

[(C) whose business activities will principally benefit such Native Hawaiians.

[(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

[(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

[(ii) the award of such contract would be consistent with the Program Participant's business plan; and

[(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

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

[(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15 solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

[(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

[(i) be primarily engaged in the wholesale or retail trade;

[(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

[(iii) be a regular dealer, as defined pursuant to section 35(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and

[(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

[(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

[(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

[(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(a)(20).

[(B) The activities and transactions prohibited by subparagraph (A) include—

[(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

[(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

[(iii) the receipt of any other benefit or right that may be an incident of ownership.

[(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

[(ii) The employees referred to in clause (i) are—

[(I) regional administrators;

[(II) district directors;

[(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

[(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and

[(V) such other employees as the Administrator may deem appropriate.

[(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

[(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

[(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action

with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicitated or directed.

[(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

[(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

[(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

[(20)(A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

[(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

[(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

[(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

[(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered "good cause" for the initiation of a termination proceeding pursuant to section 7(j)(10)(F).

[(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

[(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

[(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

[(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

[(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

[(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

[(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

[(I) such concern has exited the Capital Ownership Development Program;

[(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

[(III) the disadvantaged owners will maintain control of daily business operations.

[(C) The Administrator may waive the requirements of subparagraph (A) if—

[(i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

[(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

[(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

[(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

[(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

[(1)(A) to provide—

[(i) technical, managerial, and informational aids to small business concerns—

[(I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

[(II) by cooperating and advising with—

[(aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

[(bb) other Federal and State agencies;

[(III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

[(IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and

[(ii) through cooperation with a profit-making concern (referred to in this paragraph as a 'cosponsor'), training, information, and education to small business concerns, except that the Administration shall—

[(I) take such actions as it determines to be appropriate to ensure that—

[(aa) the Administration receives appropriate recognition and publicity;

[(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

[(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

[(dd) utilization of any one cosponsor in a marketing area is minimized; and

[(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

[(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

[(bb) the terms and conditions of the cooperation shall be specified;

[(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

[(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

[(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

[(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

[(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of section 8(b)(1)(A) of this Act; and to facilitate the implementation of such volunteer programs the Administration may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided,* That any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this Act, and may use payments made by the Administration pursuant to this subparagraph for such solicitation.

[(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic service:

[(i) such volunteers, while carrying out activities under section 8(b)(1) of this Act shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–11 employee:

[(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this Act, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay; and

[(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan out-

standing, except upon a specific request signed by such client for assistance in connection with such matter.

[(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to section 8(b)(1) of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

[(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

[(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall provide, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or Administrative proceedings arising directly out of the performance of activities pursuant to section 8(b)(1) of this Act, as amended (15 U.S.C. 637(b)(1)) to which volunteers have been made parties.

[(G) In carrying out its functions under this Act and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988, the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

[(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

[(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

[(4) to consult and cooperative with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

[(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

[(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other busi-

ness enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern." Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

[(7)(A) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

[(B) if a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of title 41, United States Code (the Walsh-Healey Public Contracts Act), he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

[(C) in any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to

which the referral pertains declines to have the application processed.

[(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act;

[(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act;

[(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

[(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contacts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

[(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

[(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this Act and of the Small Business Investment Act of 1958; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5, United States Code, to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meetings of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

[(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 7(b)(3), to local public agencies (as defined in section 110(h) of the Housing Act of 1949) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

[(15) to disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information,

in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

[(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

[(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38, United States Code).

[(c) [Reserved].]

SEC. 8. GOVERNMENT CONTRACT AND BUSINESS DEVELOPMENT ASSISTANCE FOR SMALL BUSINESS CONCERNS, ETC.

(a) GOVERNMENT CONTRACT AND BUSINESS DEVELOPMENT ASSISTANCE FOR SMALL BUSINESS CONCERNS.—

(1) ESTABLISHMENT.—There is within the Administration a program to be carried out by the Administrator to enhance the competitive viability of program participants by providing Government contract and business development assistance to program participants consistent with the requirements of this section.

(2)(A) CONTRACT AUTHORITY.—The Administrator shall, to the extent that Administrator determines it to be necessary or appropriate, enter into any contract with any contracting officer obligating the Administrator to furnish goods or service to the Government.

(B) NEGOTIATION WITH CONTRACTING OFFICER.—In any case in which the Administrator certifies to a contracting officer that the Administrator is competent and responsible to perform any procurement contract to be let by such officer, such officer may let such procurement contract to the Administrator upon such terms and conditions as may be agreed upon between the Administrator and such officer.

(C) FAIR MARKET PRICE RESTRICTION.—A contracting officer shall not let a contract for goods or services under this paragraph if the amount of such contract exceeds the fair market price of such goods or services.

(D) APPEAL OF CONTRACTING OFFICER DECISION.—(i) Whenever the Administrator and a contracting officer fail to agree, the matter shall be submitted for determination by the Administrator to the head of the agency of the contracting officer.

(ii) Not later than 5 days from the date the Administrator is notified of a contracting officer's adverse decision, the Administrator may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with head of the agency.

(iii) For purposes of this subparagraph, a contracting officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement re-

quirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection.

(iv) Upon receipt of the notice of intent to appeal, the head of the agency shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such agency head, unless the head of the agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision.

(v) If the Administrator's request for reconsideration is denied, the head of the agency shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement.

(E) DETERMINATION OF UNSUITABILITY.—If a contracting officer requests the Administrator to make the certification described in subparagraph (B) with respect to any contract that the Administrator determines is not suitable for award under this subsection, the Administrator shall notify the contracting officer of the Administrator's determination not later than 3 days after the date of such request.

(F) SUBCONTRACTING AUTHORITY.—(i) The Administrator shall, to the extent that the Administrator determines it to be necessary or appropriate, arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to program participants for such goods or services as may be necessary to enable the Administrator to perform such contracts.

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

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal organization, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656) shall be eligible for award of a contract pursuant to this section.

(G) DELEGATION OF CONTRACT ADMINISTRATION.—(i) The Administrator and the head of the agency making the procurement shall enter into an agreement under which a subcontract awarded under this subsection shall be administered by the head of the agency making the procurement.

(ii) Notwithstanding clause (i), the Administrator shall negotiate and award any such subcontract and shall assist the pro-

gram participant in the settlement of any dispute arising from the performance of such subcontract.

(iii) Any agreement entered into by the Administrator with the head of another agency before the date of the enactment of this clause that allows such agency head to negotiate or award a contract under this subsection shall not apply with respect to any subcontract offered for award after such date.

(H) AWARD AFTER GRADUATION.—The Administrator shall, to the extent that the Administrator determines it to be necessary or appropriate, make an award to a small business concern which has completed its period of program participation as described in paragraph (21)(F) if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (H); and

(ii) the prospective contract awardee was a program participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation.

(I) AWARD THROUGH COMPETITION.—(i) A subcontract offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to program participants if—

(I) there is a reasonable expectation that at least 2 program participants will submit offers and that award can be made at a fair market price; and

(II) the estimated anticipated award price of the contract (including options) may exceed $5,000,000 in the case of a contract opportunity assigned a North American Industrial Classification System code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Administrator may award a subcontract under this subsection on the basis of a competition restricted to program participants if the requirements of clause (i)(I) are met.

(J) SOLE SOURCE AWARD.—(i) In the case of any subcontract not awarded under subparagraph (I), the Administrator shall award such contract sole source to a program participant if—

(I) the program participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(II) the award of such contract would be consistent with the program participant's business plan; and

(III) the award of the contract would not result in the program participant exceeding the requirements established by paragraph (21)(G)(iii).

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

(3) SURETY BONDS.—Notwithstanding subsections (a) and (c) of the first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material

and labor for the construction, alteration, or repair of said public buildings or public work," approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a), no program participant shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if—

(A) the Administrator determines that such amount is inappropriate for such program participant in performing such contract;

(B) the Administrator takes such measures as the Administrator considers appropriate for the protection of persons furnishing materials and labor to a program participant receiving any benefit pursuant to this paragraph;

(C) the Administrator assists, insofar as practicable, a program participant receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administrator may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(D) the Administrator finds that such program participant is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of title IV of the Small Business Investment Act of 1958; and

(E) the program participant is determined to be a startup concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

(4) SOLE SOURCE CONTRACT NEGOTIATION.—(A) Any program participant selected by the Administrator to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B) CALCULATION OF FAIR MARKET PRICE.—(i) For purposes of paragraph (2)(C), a fair market price shall be determined by the agency according to clauses (ii) and (iii) and submitted along with the procurement requirement to the Administrator. The submission also shall include any data used by the agency in calculating the fair market price.

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis taking into account prevailing market conditions, commercial prices for similar goods or services, and data from other Federal agencies. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administrator.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(iv) The agency's estimate of the current fair market price (and any supporting data furnished to the Administrator) shall not be disclosed to any potential offeror (other than the Administrator).

(C) A program participant selected by the Administrator to perform or negotiate a contract to be let pursuant to this subsection may request the Administrator to protect the agency's estimate of the fair market price for such contract pursuant to paragraph (2)(A).

(5) SOCIAL DISADVANTAGE.—(A) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(B) Any determination made pursuant to this paragraph shall be made by the Administrator and shall not be delegated.

(6) ECONOMIC DISADVANTAGE.—(A)(i) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(ii) In determining the degree of diminished credit and capital opportunities the Administrator shall consider the assets and net worth of such socially disadvantaged individual as it relates to—

(I) the assets and net worth of a business owner who is not socially disadvantaged; and

(II) the capital needs of the primary industry in which the owner of the business is engaged.

(iii) In determining the economic disadvantage of an Indian tribe, the Administrator shall consider, where available, information such as the following——

(I) the per capita income of members of the tribe excluding judgment awards;

(II) the percentage of the local Indian population below the poverty level; and

(III) the tribe's access to capital markets.

(B) For the purpose of this section, an individual who has been determined by the Administrator to be economically disadvantaged at the time of program entry shall be deemed to be economically disadvantaged for the term of the program, as computed under paragraph (21).

(C) Whenever the Administrator computes personal net worth for the purpose of program entry, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons; and

(ii) the equity that disadvantaged owners have in their primary personal residences.

(D) The Administrator shall not establish a maximum net worth that prohibits program entry that is less than $750,000.

(7) PROGRAM PARTICIPANT.—

(A) DEFINITION.—For purposes of this section, the term "program participant" means a small business concern which is certified by the Administrator that it meets the requirements of subparagraph (B) and—

(i) which is at least 51 percent unconditionally owned by—

(I) one or more socially and, at the time of program entry, economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe, (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by—

(I) one or more socially and, at the time of program entry, economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) PROGRAM PARTICIPATION ELIGIBILITY.—A program participant meets the requirements of this subparagraph if the management and daily business operations of such small concern are controlled by one or more—

(i) socially and, at the time of program entry, economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) NATIVE HAWAIIAN ORGANIZATION.—For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which—

(i) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(ii) is controlled by Native Hawaiians, and

(iii) whose business activities will principally benefit such Native Hawaiians.

(D) ANNUAL CERTIFICATION.—Each program participant shall certify to the District Director for the district in which its principal place of business is located, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control by socially disadvantaged individuals.

(E) CAPABILITY DETERMINATION.—The term "program participant" shall not include any concern unless the Administrator determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (2)(F) and has reasonable prospects for success in competing in the private sector.

(F) SPECIAL RULES ON ELIGIBILITY.—(i) Except as provided in clause (iii), no individual who was determined pursuant to this section to be socially and economically disadvantaged before the date of the enactment of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such date.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to paragraph (5) shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to this subsection if—

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

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

(iv) No program participant, previously eligible for the award of contracts pursuant to this subsection, shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10).

(v)(I) A program participant eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership or control of the program participant that does not alter the eligibility of the program participant as determined by paragraphs (5), (6), and (7).

(II) The program participant shall notify the Assistant Administrator for Minority Small Business and Capital Ownership of any such change in control or ownership and provide the Assistant Administrator with sufficient information to enable the Assistant Administrator to determine that the transfer of ownership and control does not alter eligibility for participation in the program.

(III) In the event of such a alteration of ownership or control, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (27).

(8) MANAGEMENT RESTRICTIONS.—(A) The Administrator shall not restrict the amount of money that may be removed from the program participants by its owners.

(B) The Administrator shall not impose any restrictions on the management of the company except insofar as such manage-

ment would violate other eligibility provisions or Federal procurement law.

(C) Notwithstanding this provision, the Administrator may determine that a program participant is not capable of performing a specific contract and may choose not to award a contract to a program participant.

(9) EXPANSION INTO OTHER INDUSTRIES.—Limitations established by the Administrator in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of North American Industry Classification System codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a program participant into areas of industrial endeavor where such concern has the potential for success.

(10) OPPORTUNITY FOR HEARING.—(A) Subject to the provisions of subparagraph (E), the Administrator, prior to taking any action described in subparagraph (B), shall provide the program participant that is the subject of such action, an opportunity for a hearing on the record after providing written notification of an action set forth in paragraph (B), in accordance with chapter 5 of title 5, United States Code.

(B) The actions referred to in subparagraph (A) are—

(i) denial of program admission based upon a negative determination pursuant to paragraph (5), (6), or (7);

(ii) a termination pursuant to paragraph (21)(D);

(iii) a graduation pursuant to paragraph (21)(F); and

(iv) the denial of a request to issue a waiver pursuant to paragraph (20)(B).

(C) The Administrator's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless the decision is not supported by substantial evidence in the record.

(D) A decision rendered pursuant to this paragraph shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(E) The hearing officer selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administrator's position;

(ii) is untimely filed;

(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within 90 days after a written notification of the Administrator taking an action pursuant to subparagraph (B).

(11) OUTREACH EFFORT.—(A) The Administrator shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

(B) Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few program participants and from potentially eligible program participants in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(12) CONSTRUCTION CONTRACTS.—To the maximum extent practicable, construction subcontracts awarded by the Administrator pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(13) CAPABILITY STATEMENT.—

(A) IN GENERAL.—The Administrator shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administrator a capability statement.

(B) CONTENTS.—Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the business opportunity specialist in the district to which the program participant is assigned.

(C) CLASSIFICATION.—The Administrator shall separate such statements by those program participants primarily dependent upon local contract support and those primarily requiring a national marketing effort.

(D) DISSEMINATION.—Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities within such agencies that may purchase the types of items or services described on the capability statements.

(E) CONTRACTING ACTIVITY COMMUNICATION WITH ADMINISTRATION.—Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant business opportunity specialist to indicate the number, type and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for contracting with the Administrator and subsequent subcontracting to those concerns for which it has received capability statements.

(14) CONTRACT FORECAST.—(A) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify the following:

(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

(iv) The activity responsible for the award and administration of the contract.

(B) FORECAST DISSEMINATION.—The head of each executive agency subject to the provisions of subparagraph (A) shall within 10 days of completion furnish such forecasts to the Administrator and the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) of this Act for such agency.

(C) LIMITS ON DISSEMINATION.—The information reported pursuant to subparagraph (B) may be limited to classes of items and services for which there are substantial annual purchases.

(D) FORECAST AVAILABILITY.—Such forecasts shall be available to program participants and all other small business concerns.

(15) PERCENTAGES OF CONTRACT PERFORMANCE BY PROGRAM PARTICIPANTS.—

(A) SERVICES AND PROCUREMENT.—A program participant may not be awarded a contract under this subsection unless the program participant agrees that—

(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(B) ALTERATION OF PERCENTAGES.—The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard established by the Administrator pursuant to section 3(a) of this Act for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 15(n) of this Act.

(C) CONSTRUCTION CONTRACT REGULATIONS.—(i) The Administrator shall establish, by regulation and after the opportunity for notice and comment, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph.

(ii) The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B),

except that such a percentage may not differ from a percentage established under section 15(n) of this Act for the same industry category.

(16) PERFORMANCE EXCEPTION FOR WHOLESALERS AND RETAILERS.—(A) An otherwise responsible program participant that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or section 15(a) solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), the program participant shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the size standard for the North American Industrial Classification System Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 1(a) of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (popularly known as the "Walsh-Healey Act"; 41 U.S.C. 35(a)), in the product to be offered the Government or be specifically exempted from such section by paragraph (24)(C) of this subsection; and

(iv) represent that it will supply the product of a small manufacturer as defined in section 3 of this Act, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small manufacturer can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small manufacturer is available to participate in the Federal procurement market.

(17) RESTRICTION ON ADMINISTRATION EMPLOYEES.—

(A) IN GENERAL.—No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any program participant if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such program participant or with respect to the administration of any assistance provided to program participants generally under this subsection, section 8(b), or section 7(a)(20).

(B) PROHIBITED TRANSACTIONS.—The activities and transactions prohibited by subparagraph (A) include—

(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or

any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C) EMPLOYEE CERTIFICATION AND PENALTIES.—(i) The employees designated in clause (ii) shall annually submit a written certification to the Administrator regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Assistant Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 8(b); and

(V) such other employees as the Administrator may designate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 percent of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(18) PROHIBITION ON POLITICAL ACTIVITY.—

(A) IN GENERAL.—Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 8(b), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

(B) PENALTIES.—Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) EXCEPTION.—Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) OTHER LAWS NOT AFFECTED.—The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(19) ANNUAL REPORT TO BUSINESS OPPORTUNITY SPECIALIST.—

(A) IN GENERAL.—Program participants shall semiannually report to their assigned business opportunity specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such program participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) SUBMISSIONS TO PRINCIPAL OFFICE.—The business opportunity specialist shall promptly review and forward such report to the Assistant Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) CAUSE FOR TERMINATION.—The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered good cause for the initiation of a termination proceeding pursuant to paragraph (21)(D) of this section.

(20) EFFECT OF CHANGE OF OWNERSHIP AND CONTROL.—

(A) IN GENERAL.—

(i) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed (as performance is defined in paragraphs (15) and (16)) by the program participant that initially received such contract.

(ii) Notwithstanding the provisions of clause (i), if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) WAIVER.—The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of

the contract would severely impair attainment of the agency's program objectives or missions.

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award pursuant to this subsection.

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death.

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the program established under this subsection;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(III) the disadvantaged owners will maintain control of daily business operations.

(C) TIMING OF WAIVER REQUEST.—The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraphs (B)(i), (ii), and (iii), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iv), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) NOTIFICATION TO ADMINISTRATOR.—Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) TREATMENT OF SMALL BUSINESS INVESTMENT COMPANY INTEREST.—Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(21) CONDITIONS OF PARTICIPATION.—

(A) DURATION.—A program participant shall be permitted to continue participation in such program for a period of time which is 9 years. Nothing contained in this subparagraph shall be deemed to prevent the Administrator from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(B) BUSINESS PLAN SUBMISSION.—(i) Promptly after certification as a participant in the program established by this section, a program participant shall submit a business

plan (hereinafter referred to as the "plan") as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such program participant.

(ii) The plan may be a revision of a preliminary business plan submitted by the program participant or required by the Administrator as a part of the application for certification under this subsection and shall be designed to result in the program participant eliminating the conditions or circumstances upon which the Administrator determined eligibility pursuant to paragraph (7) of this section.

(iii) Such plan, and subsequent modifications submitted under clause (v), shall be approved by the Business Opportunity Specialist prior to the program participant being eligible for award of a contract pursuant to this subsection.

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

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

(II) An analysis of the program participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the program participant from receiving contracts other than those awarded under this section.

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

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

(V) Estimates of contract awards pursuant to this subsection and from other sources, which the program participant will require to meet the specific targets, objectives, and goals for the years covered by its plan.

(v) Each program participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the District Director for approval. The currently approved plan shall be considered valid until such time as a modified plan is reviewed by the Business Opportunity Specialist and approved by the District Director.

(vi) Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such program participant has complied with the requirements of paragraph (21)(G) of this section relating to attaining business activity

from sources other than contracts awarded pursuant to this section.

(vii) Each program participant shall annually forecast its needs for contract awards under this section for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (v). Such forecast shall be known as the "section 8(a) contract support level" and shall be included in the program participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under this section, reflecting compliance with the requirements of paragraph (21)(G) relating to attaining business activity from sources other than contracts awarded pursuant to this section,

(II) the types of contract opportunities being sought, identified by North American Industrial Classification System Code or otherwise,

(III) an estimate of the dollar value of the section 8(a) contract support level to be sought on a competitive basis, and

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

(C) CONDITIONS FOR DENIAL OF ASSISTANCE.—A program participant shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (21)(A); and

(iii) is terminated or graduated pursuant to proceedings conducted in accordance with paragraph (10).

(D) TERMINATION DEFINED.—For purposes of this subsection, the term "terminated" and the term "termination" means the total denial or suspension of assistance under this paragraph or under this section prior to the graduation of the program participant or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including—

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

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

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

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

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title

48, Code of Federal Regulations (or any successor regulation); or

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

(E) INITIATION OF TERMINATION PROCEEDING.—(i) The District Director may initiate a termination proceeding by recommending such action to the Assistant Administrator for Minority Small Business and Capital Ownership Development.

(ii) Whenever the Assistant Administrator determines such termination is appropriate, within 15 days after making such a determination the program participant shall be provided a written notice of intent to terminate, specifying the reasons for such action.

(iii) No program participant shall be terminated from the program pursuant to subparagraph (D) without first being afforded an opportunity for a hearing in accordance with paragraph (10).

(iv) If a termination proceeding is initiated against a program participant, such participant shall be ineligible from receiving assistance pursuant to this section until the final disposition of the termination action.

(v) If the program participant is reinstated upon final decision by the Administrator pursuant to paragraph (10), the time during which the program participant did not receive assistance shall be added on to the original program term end date.

(F) GRADUATION DEFINED.—For the purposes of this subsection and subsection 8(b) the term "graduated" or "graduation" means that the program participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section.

(G) BUSINESS ACTIVITY TARGETS.—(i) During the developmental stage of its participation in the program, a program participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to this subsection (hereinafter referred to as "business activity targets.").

(ii) Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administrator that the program participant will engage in

a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

(iii) During the transitional stage of the program a program participant shall be subject to regulations regarding business activity targets that are promulgated by the Administrator. Such regulations shall:

(I) Establish business activity targets applicable to program participants during the fifth year and each succeeding year of program participation.

(aa) Such activity targets shall, for such period of time, reflect a reasonably consistent increase in contracts awarded other than pursuant to this subsection, expressed as a percentage of total sales.

(bb) The Administrator may establish modified business activity targets for program participants that have participated in the program for a period of longer than 5 years on the date of the enactment of this Act.

(II) Require the program participant to certify that it has met its business activity targets or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (III) prior to the receipt of any contract awarded pursuant to this subsection.

(III) Authorize the Administrator to take appropriate remedial measures with respect to a program participant that has failed to attain a required business activity target for the purpose of reducing such participant's dependence on contracts awarded pursuant to this section.

(aa) Such remedial actions may include assisting the program participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the program participant pursuant to this subsection.

(bb) Unless the remedial measures taken pursuant to subclause (aa) bar the award of contracts to program participants, no remedial measures shall be reviewable pursuant to paragraph (10).

(H) ELIGIBILITY REVIEW.—(i) The Administrator shall conduct an evaluation of a program participant's eligibility for continued participation in the program whenever it receives specific and credible information alleging that such program participant no longer meets the requirements for program eligibility.

(ii) Upon making a finding that a program participant is no longer eligible, the Administrator shall initiate a termination proceeding in accordance with subparagraphs (D) and (E).

(iii) A program participant's eligibility for award of any contract under the authority of this section may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(22) CERTIFICATION AND REVIEW BY ADMINISTRATOR.—

(A) ASSISTANT ADMINISTRATOR COORDINATION.—The Assistant Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and program participants.

(B) DIVISION OF PROGRAM CERTIFICATION AND ELIGIBILITY.—(i) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") in the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Assistant Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(ii) Subject to the provisions of paragraph (5)(B), the functions and responsibility of the Division of Program Certification and Eligibility are to—

(I) receive, review and evaluate applications for certification pursuant to paragraphs (5), (6), and (7);

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

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

(IV) review and evaluate financial statements and other submissions from concerns participating in the program established by this subsection to ascertain continued eligibility to receive subcontracts pursuant to this section;

(V) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Assistant Administrator for Minority Small Business and Capital Ownership Development;

(VI) make recommendations to the Assistant Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(VII) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d), or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(VIII) implement such policy directives as may be issued by the Assistant Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (E) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(C) PROGRAM ADMISSION AND CONTRACT OPPORTUNITIES.—An applicant shall not be denied admission into the program established by this subsection due solely to a determination by the Division of Program Certification and Eligibility that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern on a prime contract basis; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar items or services.

(D) CERTIFICATION DECISION.—Except as provided in paragraph 5(B), not later than 90 days after receipt of a completed application for program certification, the Assistant Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a program participant or shall deny such application.

(E) DIVISION REVIEW.—

(i) Thirty days before the conclusion of each fiscal year, the Director of the Division of Program Certification and Eligibility shall review all concerns that have been admitted into the program during the preceding 12-month period.

(ii) The review shall ascertain the number of entrants, their geographic distribution, and their industrial classification. The Director shall also estimate the expected growth of the program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the program.

(iii) The findings and conclusions of the Director shall be reported to the Assistant Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year.

(iv) Based on such report and such additional data as may be relevant, the Assistant Administrator shall, by October 31 of each year, issue rules as that term is defined in section 551(4) of title 5, United States Code, applicable to such fiscal year that—

(I) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(II) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(III) establish priorities in the processing and admission of new program participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to

small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administrator shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(23) STAGES OF PROGRAM PARTICIPATION.—

(A) IN GENERAL.—The Capital ownership Development Program established by this subsection shall have a developmental stage and transitional stage.

(B) DEVELOPMENTAL STAGE.—The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) TRANSITIONAL STAGE.—The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(24) TYPES OF ASSISTANCE PROVIDED BY THE ADMINISTRATOR.—The Administrator shall make available during the developmental and transitional stages the following assistance:

(A) Contract support pursuant to this section.

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

(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (popularly known as the "Walsh-Healey Act"; 41 U.S.C. 35(a)), which exemptions shall apply only to contracts awarded pursuant to this section and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000.

(D)(i) Financial assistance whereby the Administrator may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns.

(ii) For purposes of this subparagraph the term "training provider" shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998.

(iii) Assistance may be made by direct payment to the training provider or by reimbursing the program participant or the participant's employee, if such reimbursement is found to be reasonable and appropriate.

(iv) The Administrator shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort.

(v) No financial assistance shall be granted under this subparagraph unless the Administrator determines each of the following:

(I) The program participant has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development.

(II) No more than 5 employees or potential employees of the program participant are recipients of any benefits under this subparagraph at any one time.

(III) No more than $2,500 shall be made available for any one employee or potential employee.

(IV) The length of training or upgrading financed by this subparagraph shall be no less than 1 month nor more than 6 months.

(V) The program participant has given adequate assurance it will employ the trainee or upgraded employee for at least 6 months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period.

(aa) If such concern, trainee, or upgraded employee breaches this agreement, the Administrator shall be entitled to obtain from the violating party the repayment of all funds expended on behalf of the violating party.

(bb) Such repayment shall be made to the Administrator together with such interest and costs of collection as may be reasonable.

(cc) The violating party shall be barred from receiving any further assistance under this subparagraph.

(VI) The training to be financed may take place either at such concern's facilities or at those of the training provider.

(VII) The program participant will maintain such records as the Administrator deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(E)(i) The transfer of technology or surplus property owned by the United States to such a concern.

(ii) Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to program participants on a priority basis.

(iii) Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the program and for one year thereafter.

(F) Training assistance whereby the Administrator shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under this section in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(G) Joint ventures, leader-follow arrangements, and teaming agreements between the program participant and other program participants and other small business concerns with respect to contracting opportunities. Such activities shall be undertaken on the basis of programs developed by the procuring agency with the assistance of the Administration.

(H) Transitional management business planning training and technical assistance.

(25) TRANSITIONAL STAGE ASSISTANCE.—Program participants in the developmental stage of program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G) of paragraph (24).

(26) DEVELOPMENTAL STAGE ASSISTANCE.—Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), and (H) of paragraph (24).

(27) DURATION OF STAGES.—Subject to the provisions of paragraph (21)(A), a program participant may receive developmental assistance under this subsection and contracts under this subsection for a total period of not longer than 9 years, measured from the date of its certification under this subsection, of which—

(A) no more than 5 years may be spent in the developmental stage of program participation; and

(B) no more than 4 years may be spent in the transitional stage of program participation.

(28) DATA COLLECTION.—

(A) IN GENERAL.—The Administrator shall develop and implement a process for the systematic collection of data on the operations of the program established pursuant to this section.

(B) REPORT.—Not later than April 30 of each year, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the program that shall include the following:

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

(ii) A compilation and evaluation of those business concerns that have exited the program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals.

(iii) For those businesses that have continued operations after they exited from the program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the program during the preceding fiscal year identifying, by State and by region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under this section, and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (25) and (26) and section 7(a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to this section and such amount expressed as a percentage of total sales of—

(I) all firms participating in the program during such year; and

(II) firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next 2-year period to service the expected portfolio of firms certified pursuant to this section.

(vii) The total dollar value of contracts and options awarded pursuant to this section, at such dollar increments as the Administrator deems appropriate, for each 6 digit North American Industrial Classification System code under which such contracts and options were classified.

(b) MANAGEMENT AND TECHNICAL ASSISTANCE.—

(1) CONTRACTS FOR ASSISTANCE.—The Administrator shall be required to enter into contracts with business concerns, not-for-profit entities, and other persons capable of providing management and technical assistance, as may be necessary, to participants in the program established in subsection (a), to firms described in paragraph (5) or paragraph (6) of that subsection but are not participants in the program established pursuant to

that subsection, and to small business concerns which have loans guaranteed pursuant to section 7(i).

(2) SELECTION OF CONTRACTORS.—The Administrator shall select contractors based on the experience in advising small business concerns on financial and business operations, including but not limited to comprehensive business plans, and other functions needed to preserve and expand small businesses eligible for assistance under paragraph (1). To the extent practical, the Administrator shall select, as contractors, small business concerns but the primary evaluation criteria shall be the technical ability of the contractor to provide the services set forth in this subsection.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $6,000,000 for each of fiscal years 2004 and 2005. Such sums shall remain available until expended.

(c) COORDINATION WITH OTHER AGENCIES.—The Administrator shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of Federal agencies to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of subsection (a) of this section and section 7(i).

(d)(1) * * *

* * * * * * *

[(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

[(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

[(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

[(C) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case contractors having multiple contracts, on an aggregate basis.]

(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administrator is authorized to—

(A) assign at least one commercial marketing representative per state whose primary responsibilities shall be to—

(i) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(ii) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small manufacturers, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns eligible for participation under section 8(a), and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency;

(iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts, on an aggregate basis including recommendations to the contracting officer for an assessment of liquidated damages;

(iv) work directly with small businesses to counsel them on marketing and subcontracting to large business prime contractors that have contracts with the Federal Government;

(v) identify large business buyers of small business products and services;

(vi) assist small businesses in receiving timely payment from large business prime contractors that have contracts with the Federal Government; and

(vii) perform program reviews of the small business outreach programs and subcontracting programs of large businesses.

(B) Not later than September 30, 2004, each state shall be assigned at least one commercial marketing representative, authorized by paragraph 10(A) of this section, who must be physically located in each state.

(C) Not later than 120 days after enactment of this Act, the Administrator shall, after the opportunity for notice and comment, promulgate regulations governing the Administrator's review of subcontracting plans including the standards for determining good faith effort of compliance with the subcontracting plans.

* * * * * * *

[(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

[(1) DEFINITIONS.—In this subsection, the following definitions apply:

[(A) CONTRACTING OFFICER.—The term "contracting officer" has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

[(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term "small business concern owned and controlled by women" has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

[(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

[(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

[(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

[(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

[(D) the anticipated award price of the contract (including options) does not exceed—

[(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

[(ii) $3,000,000, in the case of all other contracts;

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

[(F) each of the concerns—

[(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

[(ii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.

[(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

[(4) IDENTIFICATION OF INDUSTRIES.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

[(5) ENFORCEMENT; PENALTIES.—

[(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall establish procedures relating to—

[(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(F)); and

[(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

[(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(F).

[(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

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

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

[(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

[(n) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—

[(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

[(A) to expand business-to-business relationships between large and small businesses; and

[(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

[(2) MATCHING REQUIREMENT.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

[(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.]

(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term "small business concern owned and controlled by women" has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that 2 or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (4);

(D) the anticipated award price of the contract (including options) does not exceed—

(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

(ii) $3,000,000, in the case of all other contracts;

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

(F) each of the concerns—

(i) is certified by a Federal agency or a State government as a small business concern owned and controlled by women;

(ii) is certified by a national certifying entity approved by the Administrator as a small business concern owned and controlled by women; or

(iii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation in accordance with standards established by the Administration to support such certification.

(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) IDENTIFICATION OF INDUSTRIES.—

(A) IN GENERAL.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(B) DETERMINATION BY CONTRACTING OFFICER.—Until such time as the Administrator conducts such study, the determination as to whether an industry is under-represented by small business concerns owned and controlled by women shall be made by the contracting officer.

(C) DEADLINE.—Not later than 90 days after the date of the enactment of this subparagraph the Administrator shall—

(i) ensure the completion of the study described in this paragraph;

(ii) approve national certifying entities for the purposes of paragraph (2)(F)(ii); and

(iii) make determinations in accordance with paragraph (3).

(5) ENFORCEMENT; PENALTIES.—

(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall use existing procedures established by the Office of Hearings and Appeals relating to—

(i) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(F)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(F).

(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

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

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

(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(n) AUTHORITIES OF ADMINISTRATOR.—In carrying out its functions under subsections 7(i), 8(a), and 8(b) of this Act the Administrator may do the following:

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

(2) Accept voluntary and uncompensated services, notwithstanding section 1342 of title 31, United States Code.

(3) Employ experts and consultants or organizations pursuant to the authority in section 6(h). No individual may be employed under the authority of this paragraph for more than 100 days in any fiscal year. No individual employed under this paragraph may be compensated at rates in excess of the daily equiv-

alent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime. Individuals employed under this paragraph may be allowed, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code for persons in the Government service employed intermittently. Contracts for employment under this paragraph may be renewed annually.

* * * * * * *

[SEC. 12. The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

[SEC. 13. No loan shall be made or equipment, facilities, or services furnished by the Administration under this Act to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this Act; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

[SEC. 14. To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.]

SEC. 12. TRAINING AND ASSISTANCE.

(a) ASSISTANCE.—The Administrator shall (through co-sponsorships, small business development centers, women's business centers, the Office of Veterans Affairs, and other programs as the Administrator determines appropriate) provide technical and managerial assistance, advice and guidance on matters of government procurement (at the Federal, State, and local levels) and information on the policies, practices, and principles of good management, and, when appropriate, distribute publications and other material on Administration programs to small business concerns, including all categories of such concerns defined in section 3 of this Act.

(b) VOLUNTEERS.—

(1) The Administrator shall recruit executive volunteers to assist the Administrator in carrying out this section.

(2) The Administrator shall recruit retired and active executives to form the Service Corps of Retired Executives and the Active Corps of Executives. Such executives will be responsible for providing technical and managerial assistance and advice to small business concerns.

(3) The Administrator shall recruit retired and active executives from large and small manufacturers to form the Service Corps of Retired Manufacturing Executives and the Active Corps of Manufacturing Executives. Such executives will advise, assist, and train small manufacturers.

(4) The Administrator may enter into appropriate contracts, grants, or cooperative agreements with the volunteers or corps referred to in this subsection in order to provide the services set forth in this section.

(5) The Administrator may maintain the headquarters of the corps referred to in this subsection and assign, at his discretion, Administration personnel to assist the volunteers.

(6) The volunteers may solicit cash, other personal property, and in-kind contributions from the private sector to be used to carry out their functions under this section. The volunteers may use payments from the Administrator made pursuant to this subsection to assist in such solicitations.

(7) The Administrator may permit any individual or group of persons participating in the programs established pursuant to this subsection to use any facilities of the Administration, including regional and district offices, as well as clerical and computer services.

(8) The volunteers, while carrying out the purposes of this section, shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–11 employee.

(9) The Administrator may reimburse the volunteers for all necessary out-of-pocket expenses incident to their provision of services under this section, or in connection with attendance at meetings sponsored by the Administrator, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay.

(10) None of the services made available by volunteers pursuant to this subsection shall be made available to any person or small business concern who is delinquent on a loan made pur-

suant to section 7 of this Act or Title V of the Small Business Investment Act of 1958 unless such assistance relates solely to addressing the matter of the delinquency and a specific request is made in writing to the volunteer (and a record of such communication is maintained by the volunteer).

(11) No payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this subsection shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(12) Under regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this subsection to which volunteers have been made parties.

(c) SMALL BUSINESS INSTITUTES.—In carrying out its functions under this section, the Administrator may make grants (including contracts or cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities. To the extent practicable, the Administrator shall select applicants that demonstrate the best capability of serving small manufacturers.

(d) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses by—

(i) identifying opportunities for small business concerns located in areas of high unemployment or low income;

(ii) assisting small business concerns and small manufacturers in finding opportunities to supply goods and services to other businesses, particularly large businesses that have previously obtained such goods and services from businesses located outside of the United States; and

(iii) providing such other assistance as the Administrator may identify;

(B) to maintain a database, to the extent practicable, of supply chain management opportunities for small business concerns and small manufacturers;

(C) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs; and

(D) by providing businesses with information on the best practices used by other business concerns in establishing mentor-protege or other business development programs

and not limited solely to procurement by Federal, State, or local governments.

(2) MATCHING REQUIREMENT.—The Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1) an amount, either in kind or in cash, equal to the grant amount.

(3) DEFINITIONS.—For purposes of this subsection, the term "supply chain" means a network of facilities and distribution options that performs the functions of procurement of materials, transformation of these materials into intermediate and furnished products, and distribution of the finished products to customers.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000, to remain available until expended, for each of fiscal years 2004 through 2005.

SEC. 13. [RESERVED].

SEC. 14. [RESERVED].

* * * * * * *

SEC. 15. (a) To effectuate the purposes of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the pro-

posed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 3(o)) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. [Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.] *Whenever the Administration and the contracting procurement agency fail to agree, the Administrator shall submit the matter to the Director of the Office of Management and Budget, who shall render his decision regarding the matter not later than 10 days after receiving the matter. The Director may not delegate his duties under the preceding sentence except to a subordinate official within the Office of Management and Budget appointed by the President, by and with the advice and consent of the Senate.* For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a "United States industry" under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

* * * * * * *

[(c)(1) As used in this subsection:

[(A) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 46).

[(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 3(e).

[(C) The term "handicapped individual" has the same meaning given such term in section 3(f).

[(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $40,000,000.

[(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 47).

[(3) The Administrator shall monitor and evaluate such participation.

[(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

[(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

[(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

[(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

[(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.]

(c) PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS.—

(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase From People Who Are Blind or Severely Disabled established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Prod-

ucts, and for other purposes", approved June 25, 1938 (41 U.S.C. 46).

(B) The term "public or private organization for the disabled" means any organization—

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

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

(iii) which in the production of commodities and in the provision of services during any fiscal year employs disabled individuals for not less than 75 percent of the man-hours required for the production or provision of the commodities or services.

(C) The term "disabled person" means any individual who—

(i) is a service-disabled veteran; or

(ii) has a disability (as defined in section 3 of the Americans with Disabilities Act of 1990) which limits such individual's selection of any type of employment for which such individual would otherwise be qualified or qualifiable.

(2) The Administrator shall evaluate the placement of products on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled "An Act to create a Committee on Purchases of Blind made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 47) to determine the impact of such placement on for-profit small business concerns.

(3) The Administrator shall monitor and evaluate the participation of public or private organizations for the disabled in Federal procurement contracts and shall annually report the results of such monitoring and evaluation to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than March 31st of each year. This report shall include the impact of such participation on for-profit small business concerns.

(4)(A) Not later than 10 days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the disabled, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than 30 days after the filing of the appeal, the Administrator shall require each agency and department having procurement pow-

ers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next highest bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administrator who shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purposes of this subsection, a contract may be awarded only if at least 75 percent of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by disabled individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

* * * * * * *

(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING.—

(1) IN GENERAL.—To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of small business concerns *in the following order* as prime contractors, subcontractors, and suppliers.

* * * * * * *

(4) CONTRACT TEAMING.—In the case of a solicitation of offers for a **[**bundled**]** contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

(5) MINIMUM SOLICITATION PERIOD.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, small business concerns shall be allowed to submit offers for a period of not less than 60 days beginning on the date the solicitation is issued.

* * * * * * *

[(g)(1) The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The Government-wide goal for

participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Administration and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

[(2) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency. Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement

shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination. For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women. The head of each Federal agency, in attempting to attain such participation, shall consider—

[(A) contracts awarded as the result of unrestricted competition; and

[(B) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

[(h)(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section.

[(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to the President and the Congress. The Administration's submission to the President shall include the following:

[(A) The Government-wide goals for participation by small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women and the performance in attaining such goals.

[(B) The goals in effect for each agency and the agency's performance in attaining such goals.

[(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

[(D) The number and dollar value of contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women through—

[(i) noncompetitive negotiation,

[(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

[(iii) competition restricted to small business concerns, qualified HUBZone small business concerns, and

[(iv) unrestricted competitions,

for each agency and on a Government-wide basis.

[(E) The number and dollar value of subcontracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

[(F) The number and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by women.

[(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).]

(g)(1) The President shall before the close of each fiscal year establish new Government-wide procurement goals for the following fiscal year for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The President shall not simply readopt the preceding years procurement goals. The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Government-wide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract awards. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract awards and not less than 5 percent of the total value of all subcontract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract awards and not less than 5 percent of the total value of all subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individ-

uals, small business concerns participating in the program established by section 8(a) of this Act, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. The Administrator and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

(2) The head of each Federal agency shall, after consultation with the Administrator, establish goals for the participation by small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women in procurement contracts of such agency having a value of $25,000 or more. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. Goals established under this subsection shall be jointly established by the Administrator and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women to perform subcontracts under such contracts. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. Whenever the Administrator and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination. For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individ-

uals, small business concerns participating in the program established pursuant to section 8(a), small business concerns owned and controlled by women, and small manufacturers. For the purposes of the preceding sentence, each agency is prohibited from counting towards its procurement goal for small business concerns owned and controlled by socially and economically disadvantaged individuals any contract awarded to small business concerns participating in the program established pursuant to section 8(a) of this Act. The head of each Federal agency, in attempting to attain such participation, shall consider—

(A) contracts awarded as the result of unrestricted competition; and

(B) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

(h)(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administrator on the extent of participation by small business concerns, small manufacturers, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. Additionally, such reports shall contain sufficient justification if goals established for the most recent fiscal year end were established lower than the same goals for the previous fiscal year.

(2) The Administrator shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to the President and the Congress. The Administrator's submission to the President shall include the following:

(A) The Government-wide goals for participation by small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women and the performance in attaining such goals.

(B) The goals in effect for each agency and the agency's performance in attaining such goals.

(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administrator) to achieve the goals in the succeeding fiscal year.

(D) The number and dollar value of prime contracts awarded to small business concerns, small manufacturers small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically

disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act and small business concerns owned and controlled by women. For each agency and on a government-wide basis, number and dollar value of contracts issued through—

(i) noncompetitive negotiation;

(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(iii) competition restricted to small business concerns participating in the program established by section 8(a) of this Act;

(iv) competition restricted to small business concerns; and

(v) unrestricted competitions.

(E) The number and dollar value of subcontracts awarded to small business concerns, small manufacturers, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established pursuant to section 8(a) of this Act, and small business concerns owned and controlled by women.

(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).

(4) For the purpose of this subsection, the term "small disadvantaged business" means any small business concern that is certified as a "small disadvantaged business" by the Administrator.

* * * * * * *

[(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than $2,500 but not greater than $100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

[(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

[(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the authority of subsection (a) of section 8 of this Act, section 2323 of title 10, United States Code, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.**]**

(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than $2,500 but not greater than $1,000,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $1,000,000 under the authority of section 8(a) of this Act, section 2323 of title 10, United States Code, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency who shall—

(1) * * *

* * * * * * *

(9) cooperate, and consult on a regular basis, with the [Administration] *Administrator* with respect to carrying out the functions and duties described in paragraph (4) of this subsection, and

* * * * * * *

[(l)(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6).

[(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

[(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

[(B) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

[(C) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

[(D) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data

necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;

[(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;

[(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

[(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

[(3) A breakout procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

[(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the breakout procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

[(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

[(i) full-time employees of the Administration; and

[(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

[(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

[(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

[(6) For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of other

than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative.

[(7)(A) At such times as the Administrator deems appropriate. the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

[(B) The breakout procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within sixty calendar days after receipt, respond, in writing, to each recommendation made by such representative.**]**

(l)(1) The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate. The procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6).

(2) A procurement center representative is authorized to—

(A) work directly with small businesses to counsel them on the Federal market and contracting with the Federal Government;

(B) identify Federal agency buyers of small business products and services;

(C) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(D) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(E) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(F) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package

for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;

(G) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification; and

(H) receive unsolicited engineering proposals and, when appropriate—

(i) either—

(I) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal; or

(II) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

(ii) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

(3) A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administrator shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

(5)(A) The procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

(i) full-time employees of the Administration; and

(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

(B) In addition to the requirements of subparagraph (A), each procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

(C) The Administrator shall establish personnel positions for procurement representatives and advisers assigned pursuant to this subsection which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of other than commercial items and which has the potential to incur significant

savings as the result of the placement of a procurement center representative.

(7)(A) At such times as the Administrator deems appropriate, the procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) The procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within sixty calendar days after receipt, respond, in writing, to each recommendation made by such representative.

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(p) DATABASE, ANALYSIS, AND ANNUAL REPORT WITH RESPECT TO BUNDLED CONTRACTS.—

(1) * * *

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(4) ANNUAL REPORT ON CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the [Administration] *Administrator* shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

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(q)(1) The Administrator shall obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small business concerns and small manufacturers at prices and on conditions and terms which are fair and equitable.

(2) The Administrator shall determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated as small business concerns or small manufacturers for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a small business concern or small manufacturer in accordance with criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a small business concern or small manufacturer. Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated as small business

concerns or small manufacturers, as authorized and directed under this paragraph.

(3)(A) The Administration shall certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (popularly known as the "Walsh-Healey Act"; 41 U.S.C. 35(a)), he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) In any case in which a small business concern or group of such concerns has been certified by the Administrator pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administrator may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(4) The Administrator shall obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act.

(5) The Administrator shall obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act.

(6) The Administrator shall obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources.

(7) The Administrator shall make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business concerns, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns.

(8) The Administrator shall consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies.

(r) PRIORITY OF SMALL BUSINESS PROCUREMENT PREFERENCES.—

(1) IN GENERAL.—A contracting officer may not make a procurement from a source on the basis of a preference provided under any provision of this Act referred to in paragraph (2) unless the contracting officer has determined that such procurement cannot be made on the basis of a preference provided under another provision of this Act with a higher priority under such subsection.

(2) ORDER OF PRIORITY.—For purposes of this subsection, the following provisions of this Act are listed in order of priority from highest to lowest:

(A) Section 8(a).

(B) Section 31(b)(2)(B).

(C) Section 31(b)(2)(A).

(D) Section 8(m).

(3) PRIORITY OF CERTAIN OTHER PROCUREMENT PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided under any provision of this Act referred to in paragraph (2) if the procurement would otherwise by made from a different source under section 4124 or 4125 of title 18, United States Code, or the Act entitled "An Act to create a Committee on Purchases of Blind made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 47).

(s) PROCUREMENT PROGRAM FOR VERY SMALL BUSINESS CONCERNS.—

(1) ESTABLISHMENT.—The Administrator shall establish and carry out a program in accordance with the requirements of this subsection to provide improved access to Federal contract opportunities for very small business concerns.

(2) PROCUREMENT CONTRACTS.—

(A) IDENTIFICATION OF CONTRACTS.—The Administrator shall identify procurement contracts of Federal agencies for award under the program.

(B) CONTRACT AWARDS.—Under the program established pursuant to this subsection, the award of a procurement contract of a Federal agency identified by the Administrator pursuant to subparagraph (A) shall be made by the

agency to a very small business concern selected, and determined to be responsible, by the agency.

(C) COMPETITION.—All contract opportunities offered for award under the program shall be awarded on the basis of competition among very small business concerns. A contracting officer may rely in good faith on a written certification that a small business concern is a very small business concern.

(3) FINANCIAL ASSISTANCE.—In order to assist very small business concerns receiving contract awards under the program, the Administrator shall establish a preauthorization program for such concerns for the purpose of receiving financial assistance under section 7(a).

(4) VERY SMALL BUSINESS CONCERN.—For purposes of this subsection, the term "very small business concern" means a small business concern that has not more than 15 employees and—

(A) in the case of a small manufacturer, annual gross receipts of not more than $2,000,000; or

(B) in any other case, annual gross receipts of not more than $500,000.

(5) REGULATIONS.—The Administrator shall—

(A) issue proposed regulations to carry out this subsection not later than 180 days after the date of enactment of this subsection; and

(B) issue final regulations to carry out this subsection not later than 270 days after the date of enactment of this subsection.

* * * * * * *

[SEC. 17. Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

[SEC. 18. (a) The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government,, and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

[(b) As used in this Act—

[(1) "agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

[(2) "credit elsewhere" means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

[SEC. 19. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

[SEC. 20. (a)(1) For fiscal year 2000 and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

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

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

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

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

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

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

[(2) Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to (A) the availability of qualified applications, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter into such commitments. Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures or participating securities under title III of the Small Business Investment Act of 1958 may be obligated in one fiscal year and disbursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

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

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

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

[(B) shall be available for a national program, except that the Administration may use not more than an amount equal to 10 percent of the amount authorized each year for any special or pilot program directed to identified sectors of the small business community or to specific geographic regions of the United States.

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

[(c) FISCAL YEAR 1998.—

[(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 1998:

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

[(i) $40,000,000 in technical assistance grants, as provided in section 7(m); and

[(ii) $60,000,000 in direct loans, as provided in section 7(m).

[(B) For the programs authorized by this Act, the Administration is authorized to make $16,040,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

[(i) $12,000,000,000 in general business loans as provided in section 7(a);

[(ii) $3,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

[(iii) $1,000,000,000 in loans as provided in section 7(a)(21); and

[(iv) $40,000,000 in loans as provided in section 7(m).

[(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

[(i) $700,000,000 in purchases of participating securities; and

[(ii) $600,000,000 in guarantees of debentures.

[(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,000,000,000, of which not more than $650,000,000 may be in bonds approved pursuant to section 411(a)(3) of that Act.

[(E) The Administration is authorized to make grants or enter into cooperative agreements—

[(i) for the Service Corps of Retired Executives program authorized by section 8(b)(1), $4,000,000; and

[(ii) for activities of small business development centers pursuant to section 21(c)(3)(G), $15,000,000, to remain available until expended.

[(2) ADDITIONAL AUTHORIZATIONS.—

[(A) There are authorized to be appropriated to the Administration for fiscal year 1998 such sums as may be necessary to carry out this Act, including administrative ex-

penses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

[(B) Notwithstanding subparagraph (A), for fiscal year 1998—

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

[(ii) the Administration may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

[(3) HUBZONE PROGRAM.—There are authorized to be appropriated to the Administration to carry out the program under section 31, $5,000,000 for fiscal year 1998.

[(d) FISCAL YEAR 1999.—

[(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 1999:

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

[(i) $40,000,000 in technical assistance grants as provided in section 7(m); and

[(ii) $60,000,000 in direct loans, as provided in section 7(m).

[(B) For the programs authorized by this Act, the Administration is authorized to make $17,540,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

[(i) $13,000,000,000 in general business loans as provided in section 7(a);

[(ii) $3,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

[(iii) $1,000,000,000 in loans as provided in section 7(a)(21); and

[(iv) $40,000,000 in loans as provided in section 7(m).

[(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

[(i) $1,200,000,000 in purchases of participating securities; and

[(ii) $700,000,000 in guarantees of debentures.

[(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,000,000,000, of which not more than $650,000,000

may be in bonds approved pursuant to section 411(a)(3) of that Act.

[(E) The Administration is authorized to make grants or enter cooperative agreements—

[(i) for the Service Corps of Retired Executives program authorized by section 8(b)(1), $4,500,000; and

[(ii) for activities of small business development centers pursuant to section 21(c)(3)(G), not to exceed $15,000,000, to remain available until expended.

[(2) ADDITIONAL AUTHORIZATIONS.—

[(A) There are authorized to be appropriated to the Administration for fiscal year 1999 such sums as may be necessary to carry out this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

[(B) Notwithstanding subparagraph (A), for fiscal year 1999—

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

[(ii) the Administration may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

[(3) HUBZONE PROGRAM.—There are authorized to be appropriated to the Administration to carry out the program under section 31, $5,000,000 for fiscal year 1999.

[(e) FISCAL YEAR 2000.—

[(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2000:

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

[(i) $40,000,000 in technical assistance grants as provided in section 7(m); and

[(ii) $60,000,000 in direct loans, as provided in section 7(m).

[(B) For the programs authorized by this Act, the Administration is authorized to make $20,040,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

[(i) $14,500,000,000 in general business loans as provided in section 7(a);

[(ii) $4,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

[(iii) $1,000,000,000 in loans as provided in section 7(a)(21); and

[(iv) $40,000,000 in loans as provided in section 7(m).

[(C) For the programs authorized by part A of title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

[(i) $1,500,000,000 in purchases of participating securities; and

[(ii) $800,000,000 in guarantees of debentures.

[(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,000,000,000, of which not more than $650,000,000 may be in bonds approved pursuant to section 411(a)(3) of that Act.

[(E) The Administration is authorized to make grants or enter cooperative agreements—

[(i) for the Service Corps of Retired Executives program authorized by section 8(b)(1), $5,000,000; and

[(ii) for activities of small business development centers pursuant to section 21(c)(3)(G), not to exceed $15,000,000, to remain available until expended.

[(2) ADDITIONAL AUTHORIZATIONS.—

[(A) There are authorized to be appropriated to the Administration for fiscal year 2000 such sums as may be necessary to carry out this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

[(B) Notwithstanding subparagraph (A), for fiscal year 2000—

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

[(ii) the Administration may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

[(3) HUBZONE PROGRAM.—There are authorized to be appropriated to the Administration to carry out the program under section 31, $5,000,000 for fiscal year 2000.

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

[(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.

[(g) FISCAL YEAR 2001.—

[(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2001:

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

[(i) $45,000,000 in technical assistance grants as provided in section 7(m); and

[(ii) $60,000,000 in direct loans, as provided in 7(m).

[(B) For the programs authorized by this Act, the Administration is authorized to make $19,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

[(i) $14,500,000,000 in general business loans as provided in section 7(a);

[(ii) $4,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

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

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

[(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

[(i) $2,500,000,000 in purchases of participating securities; and

[(ii) $1,500,000,000 in guarantees of debentures.

[(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $4,000,000,000 of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

[(E) The Administration is authorized to make grants or enter cooperative agreements for a total amount of $5,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

[(2) ADDITIONAL AUTHORIZATIONS.—

[(A) There are authorized to be appropriated to the Administration for fiscal year 2001 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out title IV of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

[(B) Notwithstanding any other provision of this paragraph, for fiscal year 2001—

[(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program

level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

[(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

[(h) FISCAL YEAR 2002.—

[(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2002:

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

[(i) $60,000,000 in technical assistance grants as provided in section 7(m); and

[(ii) $80,000,000 in direct loans, as provided in 7(m).

[(B) For the programs authorized by this Act, the Administration is authorized to make $20,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

[(i) $15,000,000,000 in general business loans as provided in section 7(a);

[(ii) $4,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

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

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

[(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

[(i) $3,500,000,000 in purchases of participating securities; and

[(ii) $2,500,000,000 in guarantees of debentures.

[(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $5,000,000,000 of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

[(E) The Administration is authorized to make grants or enter cooperative agreements for a total amount of $6,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

[(2) ADDITIONAL AUTHORIZATIONS.—

[(A) There are authorized to be appropriated to the Administration for fiscal year 2002 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out title IV of the Small Business Invest-

ment Act of 1958, including salaries and expenses of the Administration.

[(B) Notwithstanding any other provision of this paragraph, for fiscal year 2002—

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

[(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

[(i) FISCAL YEAR 2003.—

[(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2003:

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

[(i) $70,000,000 in technical assistance grants as provided in section 7(m); and

[(ii) $100,000,000 in direct loans, as provided in 7(m).

[(B) For the programs authorized by this Act, the Administration is authorized to make $21,550,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

[(i) $16,000,000,000 in general business loans as provided in section 7(a);

[(ii) $5,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

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

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

[(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

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

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

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

[(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of

$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

[(2) ADDITIONAL AUTHORIZATIONS.—

[(A) There are authorized to be appropriated to the Administration for fiscal year 2003 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out title IV of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

[(B) Notwithstanding any other provision of this paragraph, for fiscal year 2003—

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

[(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

[SEC. 21. (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, 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 labor for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises, management and technical assistance regarding small business participation in international markets, export promotion and technology transfer; delivery or distribution of such services and information; and providing access to business analysts who can refer small business concerns to available experts: *Provided,* That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 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.

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

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

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

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

[(C) Whereas 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) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM LEVEL.—

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

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

[(C) FUNDING FORMULA.—

[(i) IN GENERAL.—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

[(I) The annual amount made available under section 20(a) for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

[(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

[(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (I) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

[(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

[(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

[(iii) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

[(I) If the amount made available is not less than $81,500,000 and not more than $90,000,000, the minimum funding level shall be $500,000.

[(II) If the amount made available is less than $81,500,000, the minimum funding level shall be the

remainder of $500,000 minus a percentage of $500,000 equal to the percentage amount by which the amount made available is less than $81,500,000.

[(III) If the amount made available is more than $90,000,000, the minimum funding level shall be the sum of $500,000 plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90,000,000.

[(iv) DISTRIBUTIONS.—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

[(I) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

[(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A).

[(v) USE OF AMOUNTS.—

[(I) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this section—

[(aa) not more than $500,000 may be used by the Administration to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1); and

[(bb) not more than $500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).

[(II) LIMITATION.—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E) if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph to less than $85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general small business development center program) or would further reduce the amount of such grants below such amount.

[(vi) EXCLUSIONS.—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G), or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

[(vii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subparagraph $125,000,000 for each of fiscal years 2001, 2002, and 2003.

[(viii) STATE DEFINED.—In this subparagraph, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

[(5) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

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

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

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

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

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

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

[(B) in technology transfer; and

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

as provided under subparagraphs (B) through (G) of subsection (c)(3). 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 pro-

gram 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)(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.

[(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.

[(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.

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

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

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

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

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

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

[(F) access to laboratory and adaptive engineering facilities.

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

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

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

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

[(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

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

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

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

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

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

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

[(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that

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

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

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

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

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

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

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

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

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

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

[(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 businesses strengths and weaknesses in the locality;

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

[(N) assisting rural small businesses—

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

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

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

[(iv) by providing information and assistance in obtaining financing for business startups and expansion;

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

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

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

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

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

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

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

[(S) providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development cen-

ters and an international trade data information network with ties to the Export Assistance Center program; and

[(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2003.

[(4) A small business development center shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

[(5) In addition to the methods prescribed in 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.

[(6) 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).

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

[(8) The Associate Administrator for Small Business Development Centers, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter 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—

[(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) Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small businesses located within

the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performance of small businesses within the State.

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

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

[(g) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND REGIONAL TECHNOLOGY TRANSFER CENTERS.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.

[(h) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

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

[(2) DUTIES.—

[(A) IN GENERAL.—The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, 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 from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose term shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

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

[(j)(1) Each small business development center shall establish an advisory board.

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

[(k) PROGRAM EXAMINATION AND 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 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.

[(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—

[(A) IN GENERAL.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and 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.

[(l) CONTRACT AUTHORITY.—The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore 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 agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.

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

SEC. 17. [RESERVED].

SEC. 18. [RESERVED].

SEC. 19. [RESERVED].

SEC. 20. AUTHORIZATION OF APPROPRIATIONS; ETC.

(a)(1) For fiscal year 2004 and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

(A) to carry out the Small Business Development Center Program under section 21, but not to exceed the annual funding level, as specified in section 21(j)(7);

(B) to pay the expenses of the National Small Business Development Center Advisory Board, as provided in section 21(m)(1);

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

(D) to pay the expenses of the association referred to in section 21(k) for conducting the certification program, as provided in section 21(l); and

(E) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the accreditation program conducted by the association referred to in section 21(l).

(2)(A) Notwithstanding any other provision of law, the Administrator shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due

under qualified contracts and other types of financial assistance and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to—

(i) the availability of qualified applications; and

(ii) limitations contained in appropriations Acts.

(B) Nothing in this paragraph authorizes the Administrator to reduce or limit its authority to enter into such commitments.

(3) Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures or participating securities under title III of the Small Business Investment Act of 1958 may be obligated in one fiscal year and disbursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

(4) The amount of deferred participation loans authorized in this section—

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

(B) shall be available for a national program, except as otherwise provided in section 7(a).

(b) There are authorized to be appropriated to the Administration for each fiscal year such sums as may be necessary to carry out the provisions of this Act and the Small Business Investment Act of 1958. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b) of this Act; and there are authorized to be transferred from such sums as may be necessary and appropriate for such administrative expenses.

(c) FISCAL YEAR 2004.—

(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2004:

(A) For the programs authorized by this Act, the Administrator is authorized to make—

(i) $70,000,000 in technical assistance grants, as provided in section 7(m); and

(ii) $100,000,000 in direct loans, as provided in section 7(m).

(B) For the programs authorized by this Act, the Administrator is authorized to make $22,000,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

(i) $16,000,000,000 in general business loans as provided in section 7(a);

(ii) $5,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958; and

(iii) $500,000,000 in loans as provided in section 7(a)(21).

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administrator is authorized to make—

(i) $5,000,000,000 in purchases of participating securities; and

(ii) $4,000,000,000 in guarantees of debentures.

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

(E) There is authorized to be appropriated $7,000,000 to carry out section 12(b).

(2) ADDITIONAL AUTHORIZATIONS.—

(A) There are authorized to be appropriated to the Administration for fiscal year 2004 such sums as may be necessary to carry out this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

(B) Notwithstanding any other provision of this paragraph, for fiscal year 2004—

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

(ii) the Administrator may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that he may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

(d) FISCAL YEAR 2005.—

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

(A) For the programs authorized by this Act, the Administrator is authorized to make—

(i) $$75,000,000 in technical assistance grants as provided in section 7(m); and

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

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

(i) $16,500,000,000 in general business loans as provided in section 7(a);

(ii) $6,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958; and

(iii) $500,000,000 in loans as provided in section 7(a)(21).

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i) $5,500,000,000 in purchases of participating securities; and

(ii) $4,500,000,000 in guarantees of debentures.

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

(E) There is authorized to be appropriated $7,000,000 to carry out section 12(b).

(2) ADDITIONAL AUTHORIZATIONS.—

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

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

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

(ii) the Administrator may not approve loans on behalf of the Administration or on behalf of any other department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that he may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

SEC. 21. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Administrator is authorized to make grants to any eligible applicant to establish the network of small business development centers proposed in the plan submitted by such applicant under subsection (b).

(b) SELECTION OF GRANTEES.—

(1) APPLICATION.—An eligible applicant may apply for a grant under subsection (a) by submitting to the Administrator for approval a plan for establishing a network of small business development centers.

(2) SELECTION.—The Administrator shall select the applicant that demonstrates it has the budgetary and other resources to ensure that it will provide the most comprehensive and coordinated assistance throughout the State. The Administrator shall require the grantee to have a separate budget for the purpose of operating its network of small business development centers and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 29 to provide for the operation of the small business development centers. The Administrator may approve, conditionally approve, or reject, a plan or combination of plans submitted under this sec-

tion. The Administrator may not delegate the authority to select grantees under this section except to the Deputy Administrator.

(3) LIMITATION BY STATE.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the Administrator shall select one grantee from each State to serve the entire State.

(B) UNAVAILABILITY EXCEPTION.—The Administrator may select 2 grantees to serve a State if no eligible applicant submits an application to serve the entire State. With respect to any such State, the Administrator, at the end of the 2-year period beginning on the date of the selection of such grantees, shall seek applications under this subsection for the purpose of replacing such grantees with a single grantee to serve the entire State.

(C) HISTORICAL EXCEPTION.—Subparagraph (A) shall not apply with respect to any State if multiple grantees served such State during calendar year 2000 or 2001.

(D) CERTAIN TERRITORIES.—In the case that no eligible applicant from a qualified territory applies for a grant under this section, the Administrator may select a grantee from any State to serve such qualified territory. For purposes of the preceding sentence, the term "qualified territory" means Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) ELIGIBLE APPLICANT.—For purposes of this section, the term "eligible applicant" means—

(A) any institution of higher education;

(B) any women's business center operating pursuant to section 29; or

(C) in the case of an entity that was receiving a grant under this section on December 31, 1990, any of the following:

(i) Any State government or any agency thereof.

(ii) Any regional entity.

(iii) Any State-chartered development, credit or finance corporation.

(iv) Any entity formed by two or more of the entities described in this paragraph.

(5) REQUIREMENT TO SEEK APPLICATIONS.—If for any reason a grant under this section is terminated or not renewed, the Administrator shall seek applications from eligible applicants with respect to such grant.

(c) GRANT PROVISIONS.—

(1) AGREEMENT BETWEEN GRANTEE AND ADMINISTRATOR.—The Administrator and the grantee shall jointly develop, negotiate, and agree upon the terms and conditions of the grant. The grantee shall also consult with the district office or offices within the State to determine the special services and assistance that are needed by the community or communities served by the grantee's small business development centers.

(2) REQUIREMENTS.—Each grant shall—

(A) allow the grantee to serve portions of the State by subcontracting the operation of a small business development center to another entity, provided that such small

business development centers shall, to the extent feasible, be located at institutions of higher education or Women's Business Centers established pursuant to section 29 of this Act;

(B) ensure that the grantee provides services as close as possible to small business concerns by providing extension services and utilizing satellite facilities, including those of any subcontractor;

(C) ensure that the grantee provides facilities and staff for each small business development center to provide maximum accessibility and benefit to small business concerns;

(D) ensure that the grantee is utilizing the resources of other Federal agencies in providing the services and assistance set forth in subsection (f); and

(E) allow the grantee to enter into a contract described in subsection (g)(2).

(3) PROHIBITION ON DELEGATION TO DISTRICT OFFICES.—The Administrator shall not delegate any authority under paragraph (1) to any employee of the Administration located in a regional or district office.

(4) FORM OF GRANT AGREEMENTS.—For purposes of this section, the term "grant" includes any contract or cooperative agreement.

(5) PROHIBITION ON CERTAIN GRANT REQUIREMENTS.—The Administrator shall not require, and a grant agreement shall not include a requirement, that the grantee serve a particular number of small business concerns with respect to loans under section 7 of this Act or title V of the Small Business Investment Act of 1958.

(d) TERM, RENEWAL, AND TERMINATION OF GRANTS.—

(1) TERM OF GRANTS.—Each grant made under this section shall be made on the basis of a calendar year or the Federal fiscal year, as determined by the Administrator.

(2) AUTOMATIC RENEWAL.—Unless the Administrator for cause terminates the grant or the grantee decides not to seek renewal of the grant, the Administrator and the grantee shall renew the agreement and may make mutually satisfactory modifications to the agreement. The renewal shall take effect on the date of termination of the old agreement.

(3) STANDARDS FOR TERMINATION.—After the opportunity for notice and comment and consultation with the association authorized by subsection (k), the Administrator shall promulgate standards for determining when cause exists to terminate a grantee. Such standards shall be codified in the Code of Federal Regulations and shall take into account the grantee's compliance with the standards set forth in the grant agreement, any budgetary restrictions faced by the grantee, the overall economic climate in the State served by the grantee, and the accreditation of the grantee's small business development centers (whether operated by the grantee or through a subcontractor) under the program established pursuant to subsection (l).

(4) NOTICE OF TERMINATION.—If the Administrator determines that cause exists to terminate a grant agreement under this section, the Administrator shall provide the grantee with written notification setting forth the reasons therefore and af-

fording the applicant an opportunity for a hearing pursuant to sections 554, 556, and 557 of title 5, United States Code.

(e) MANAGEMENT OF SMALL BUSINESS DEVELOPMENT CENTERS BY GRANTEES.—

(1) APPOINTMENT OF GRANTEE DIRECTOR.—Each Grantee shall appoint a full-time director to oversee the operations of the grant, the subcontractors to the grantee, and the small business development centers operated by the grantee. The grantee's director shall be responsible for accounting for any Federal funds used by the grantee to carry out the requirements of this section. The grantee shall have the sole discretion of selecting the director without requiring the approval of the Administrator, except that the Administrator may terminate the employment of the grantee's director if the Administrator determines that the grantee's director is unfit for the position because of a prior conviction for a felony.

(2) SMALL BUSINESS DEVELOPMENT CENTER STAFF.—Each small business development center shall have a staff, which shall be full-time, part-time, or on a contract basis, as the grantee may determine.

(3) EXPENDITURES.—Expenditures of funds by the grantee shall not require the approval of the Administrator except that the Administrator may prohibit an expenditure using Federal funds if, after consultation with the General Counsel, the Administrator determines that such expenditure violates Federal law.

(f) SERVICES PROVIDED BY THE GRANTEE THROUGH SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) IN GENERAL.—Each grantee and its subcontractors shall assist small business concerns 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. Small Business Development Centers shall, in providing assistance to small manufacturers, coordinate such assistance and utilize the resources of the Manufacturing Extension Partnership of the National Institutes of Standards and Technology.

(2) PERIODIC MODIFICATION.—Each grantee or its subcontractors shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community and those of small manufacturers in particular.

(3) ACCESS TO PROFESSIONALS.—Each grantee shall ensure that small business development centers provide access to:

(A) Business analysts to counsel, assist, and inform small business clients.

(B) Technology transfer agents to provide state of art technology to small business concerns through coupling with national and regional technology data sources.

(C) Information specialists to assist in providing information searches and referrals to small business concerns.

(D) Part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises.

(E) Laboratory and adaptive engineering facilities.

(4) SERVICES.—Each grantee shall ensure that the services provided by its network of small business development centers include—

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

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

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

(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

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

(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small business concerns, including—

(i) working to increase the access of small business concerns 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 small manufacturers;

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

(iv) assisting small manufacturers in developing more efficient operations, including coordination of assistance with the Manufacturing Extension Partnership of the National Institutes of Standards and Technology;

(C) in cooperation with the Department of Commerce, the entities providing services pursuant to section 12(d), and other relevant Federal agencies, actively assisting small business concerns in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business concerns and prescreened foreign buyers, assisting small business concerns to participate in international trade shows, assisting small business concerns in obtaining export financing, assisting small manufacturers in identifying supply chain management opportunities, and facilitating the development or reorientation of marketing and

production strategies; where appropriate, the grantee and the Administrator may work in cooperation with the State to establish a State international trade center for these purposes;

(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small business concerns;

(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 concerns doing business, or attempting to develop business, in foreign markets;

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

(G) assisting small business concerns 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;

(H) maintaining current information concerning Federal, State, and local regulations that affect small business concerns and counsel small business concerns on methods of compliance. Counseling and technology development shall be provided when necessary to help small business concerns 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 business concerns;

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

(N) assisting rural small business concerns in developing marketing and production strategies that will enable them to better compete in the domestic market by providing technical assistance needed by rural small business concerns, by making available managerial assistance to rural small business concerns, and by providing information and assistance in obtaining financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business concerns 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 business concerns 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 business concerns can be referred;

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

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

(S) providing small business concerns 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;

(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs;

(U) in the case of a small business development center located at an institution of higher learning, hosting semi-annually a procurement conference to which the grantee (or its subcontractors) invites small business concerns, including small manufacturers, to meet with the procurement officials of such institution in an effort to increase procurement by such institution from small business concerns and small manufacturers;

(V) providing comprehensive plans (developed in cooperation with relevant State and Federal agencies) relating to the export potential of small business concerns, including small manufacturers; and

(W) assisting small business concerns to develop and implement strategic business plans to timely and effectively respond to the closure of a large business concern that has a significant adverse impact on the community—

(i) by developing broad economic assessments of the adverse impacts of such closure;

(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 adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms;

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

(v) by assisting unemployed individuals in establishing a small business concern.

(g) SPECIAL RULES RELATING TO SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) SERVICES TO OUT-OF-STATE SMALL BUSINESS CONCERNS.—The Administrator may allow a small business development center to serve small business concerns located outside the State in which such center is located (or, in the case of a State with more than one grantee, outside the area served by the grantee) to the extent such business concerns are located within close geographical proximity to the small business development center as determined by the Administrator.

(2) CONTRACTS WITH OTHER AGENCIES.—Subject to the restrictions set forth in this paragraph, a grantee (or its subcontractors, with the grantee's approval) may contract with a Federal Department or agency to provide specific assistance to small business concerns through its network of small business development centers. Before bidding on a contract described in this paragraph, a grantee shall receive approval from the Administrator. Before granting approval, the Administrator shall consider the subject and scope of the contract and the extent to which performance of the contract would provide assistance to small business and not impair the performance of the grantee's obligations under this section. A contract for assistance under this paragraph shall not count toward the achievement of any contracting goal under section 15(g).

(3) SMALL BUSINESS VENDORS.—Each grantee shall ensure, to the extent practicable, that its network of small business development centers utilize and compensate qualified small business vendors, including private management consultants, private consulting engineers, and private testing laboratories, to provide services under this section to small business concerns. To the extent appropriate for the community served by the small business development center, such qualified small business vendors should include at least one such vendor with expertise in manufacturing and assisting small manufacturers.

(4) COORDINATION WITH DISTRICT OFFICES, ETC.—The grantees shall ensure that the small business development centers shall work in close cooperation with the Administration's regional and district offices, the local small business community, and appropriate State and local agencies. No action by a grantee or its subcontractors or staff shall require the approval of any employee in a regional or district office of the Administration. Any such employee shall, after consultation with district counsel, notify the Assistant Administrator for Small Business Development Centers if such employee believes that the grantee or its subcontractors or staff has taken action that violates the law or jeopardizes the legal position of the United States.

(5) ASSISTANCE FROM STATE INTERNATIONAL TRADE OFFICES.—The grantee may use funds provided by State international trade offices and co-locate employees of such offices at small business development centers.

(6) COORDINATION WITH ADMINISTRATION.—On an annual basis, the grantee, after consultation with the district director, shall review and coordinate public and private partnerships and cosponsorships with the Administrator for the purpose of more efficiently leveraging available resources on a national and a State basis. Should the grantee be unable to consult with

the district director, the grantee shall consult with the Assistant Administrator for Small Business Development Centers.

(7) PROHIBITION ON CERTAIN FEES.—Each grantee shall ensure that small business development centers shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

(8) PRIVACY REQUIREMENTS.—

(A) IN GENERAL.—Each grantee shall ensure that small business development centers shall not disclose the name or address of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, except that—

(i) the Administrator shall require such disclosure if ordered to do so by a court in any civil or criminal action; and

(ii) if the Administrator considers it necessary while undertaking a financial audit of a small business development center or the grantee's network of small business development centers, the Administrator shall require such disclosure for the sole purpose of undertaking such audit.

(B) REGULATIONS.—After notice and comment and not later than 180 days after the date of the enactment of this subparagraph, the Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under subparagraph (A)(ii).

(h) ADDITIONAL GRANTS.—

(1) IN GENERAL.—Any grantee may apply to the Administrator 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;

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

(D) small manufacturers.

(2) CERTAIN RULES TO APPLY.—Except as otherwise provided in this subsection, any additional grant under this subsection shall be subject to rules similar to the rules that apply to grants made under subsection (a).

(3) GRANT AMOUNT.—A grant shall not be made under this subsection if such grant which would exceed the grantee's pro rata share of a $15,000,000 program based upon the populations to be served by the grantee as compared to the total population of the United States. The minimum amount of eligibility for any State shall be $100,000. Any additional grant made under this section shall not be taken into account for purposes of the dollar program limitations specified in subsection (j).

(4) REALLOCATION OF UNUSED FUNDS.—If the Administrator has not received an application for an additional grant from a

grantee pursuant to this subsection within 90 days after the Administrator and the grantee have signed an agreement pursuant to subsection (c) or within 60 days after the grantee and Administrator has renewed an agreement pursuant to subsection (c), the Administrator may make such grant to any eligible applicant (determined without regard to so much of subsection (b)(4)(C) as precedes "1990,") in that State to carry out the activities specified in this subsection subject to the requirements of paragraphs (2) and (3).

(i) MATCHING FUNDS.—

(1) IN GENERAL.—The Administrator shall require as a condition of any grant (or amendment or modification thereof) made to a grantee under this section, that a matching amount 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.

(2) RESTRICTION.—The matching amount described in paragraph (1) shall not include—

(A) any indirect costs or in-kind contributions derived from any Federal program; and

(B) any amount received under a contract described in subsection (g)(2).

(j) FUNDING FORMULA.—

(1) IN GENERAL.—Subject to paragraph (3), the amount of funds to be made available to the grantee or grantees within a State under this subsection shall be equal to an amount determined in accordance with the following formula:

(A) The annual amount made available for the Small Business Development Center Program under section 20(a), less any reductions made for expenses authorized by paragraph (5), shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

(B) If the pro rata amount calculated under subparagraph (A) for any State is less than the minimum funding level under paragraph (3), the Administrator shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(C) The aggregate amount calculated under subparagraph (B) shall be deducted from the amount calculated under subparagraph (A) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

(D) The aggregate amount deducted under subparagraph (C) shall be added to the funds of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of funds made available to any State under this subsection shall not be reduced to an amount below the minimum funding level.

(2) FUNDS AVAILABILITY DETERMINATION.—The amount of funds that one or more grantees within a State are eligible to

receive under this subsection shall be the amount determined under paragraph (1), subject to any modifications required under paragraph (3), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with paragraph (4). The amount of funds received by one or more grantees in any State under any provision of this subsection shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subsection (i).

(3) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

(A) If the amount made available is not less than $81,500,000 and not more than $90,000,000, the minimum funding level shall be $500,000.

(B) If the amount made available is less than $81,500,000, the minimum funding level shall be the remainder of $500,000 minus a percentage of $500,000 equal to the percentage amount by which the amount made available is less than $81,500,000.

(C) If the amount made available is more than $90,000,000, the minimum funding level shall be the sum of $500,000 plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90,000,000.

(4) DISTRIBUTIONS.—Subject to paragraph (3), if one or more grantees within a State do not apply for, or use, their full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

(A) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administrator shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(B) If any funds remain after the application of subparagraph (A), the remaining amount may be distributed as supplemental funds to a grantee or grantees in any State, as the Administrator determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (k).

(5) USE OF AMOUNTS.—Of the amounts made available in any fiscal year to carry out this section not more than $500,000 may be used by the Administrator to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1).

(6) EXCLUSIONS.—Funds made available to one or more grantees within a State provided by the Administrator or another Federal agency to carry out subsection (f)(4), (g)(2), (h), or (o) or for supplemental grants set forth in paragraph (4)(B), shall not be included in the calculation of maximum funding

to be made available to one or more grantees within the State under paragraph (2).

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $135,000,000 for fiscal year 2004 and $145,000,000 for fiscal year 2005. The authority to award grants under this section shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.

(k) FORMATION OF ASSOCIATION.—The grantees' directors are authorized to form an association to pursue matters of common concern. If more than a majority of the grantees' directors are members of such an association, the Administrator is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents—

(1) announcing the annual scope of activities pursuant to this section;

(2) requesting proposals to deliver assistance as provided in this section; and

(3) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated grant agreement for use on an annual basis when entering into agreements with grantees.

(l) PROGRAM EXAMINATION AND ACCREDITATION.—

(1) EXAMINATION.—The Administrator shall develop and implement a biennial programmatic and financial examination of each network of small business development centers established pursuant to this section. The biennial examination shall be conducted by the Assistant Administrator for Small Business Development Centers.

(2) ACCREDITATION.—The Administrator shall provide financial support, by contract or otherwise, to the association authorized by subsection (k) for the purpose of developing and implementing a small business development center accreditation program.

(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—In renewing a grant or cooperative agreement or contract of a grantee, the Administrator shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

(B) ACCREDITATION REQUIREMENT.—The Administrator may not renew any grant under this section unless the grantee's small business development centers have been accredited under the program conducted pursuant to this subsection, except that the Assistant Administrator for Small Business Development Centers may waive such accreditation requirement if the Assistant Administrator determines that the grantee is making a good faith effort to obtain accreditation for each of the grantee's small business development centers.

(m) SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARDS.—

(1) NATIONAL SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARD.—

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

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

(2) LOCAL SMALL BUSINESS DEVELOPMENT CENTER ADVISORY BOARDS.—Each grantee's director shall establish an advisory board for the grantee's network of small business development centers. The district director shall have no authority to approve or disapprove the members of the advisory board selected by the grantee's director.

(n) ADMINISTRATION OF PROGRAM.—

(1) IN GENERAL.—Except as otherwise provided in this section, the program established by this section shall be administered by the Administrator, acting through the Assistant Administrator for Small Business Development Centers with such oversight by the Associate Administrator for Enterprise Outreach and Training as the Administrator determines to be appropriate.

(2) DUTIES OF ASSISTANT ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—The duties of the Assistant Administrator for Small Business Development Centers shall include recommending the annual program budget, reviewing the annual budgets submitted by each grantee, establishing appropriate funding levels therefore, advising the Administrator on the selection of grantees to participate in the program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between grantees and their subcontractors and conducting audits of recipients of grantees under this section.

(3) CONSULTATION REQUIREMENTS.—In carrying out the duties described in paragraph (2), the Assistant Administrator shall confer with and seek the advice of the advisory boards established pursuant to subsection (m) and the heads of the regional and district offices of the Administration.

(o) ESTABLISHMENT OF INFORMATION SHARING SYSTEM.—

(1) IN GENERAL.—The Administrator, in consultation with the grantees, their subcontractors, and the association authorized by this section shall develop and implement an information sharing system. Such system shall—

(A) allow small business development centers to exchange information about their programs;

(B) provide information central to technology transfer; and

(C) provide information central to increased utilization by United States businesses of sourcing their procurement requirements with small manufacturers.

(2) GRANT AUTHORITY.—The Administrator may make grants to one or more grantees to carry out the provisions of this subsection. Such grants shall be awarded for a period of not to exceed 5 years. The matching funds requirements of subsection (i) shall not be applicable to grants made under this subsection.

(p) COOPERATION WITH FEDERAL SCIENCE RESEARCH FACILITIES AND AGENCIES.—

(1) IN GENERAL.—Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administrator 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 Administrator is authorized to reimburse the laboratories for such services.

(2) NATIONAL SCIENCE FOUNDATION.—The National Science Foundation is authorized and directed to cooperate with the Administrator in developing and establishing programs to support small business development centers.

(3) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with grantees and their small business development centers.

(q) REGULATIONS.—In promulgating regulations to carry out this section, the Administration shall identify, and require grantee compliance with, the provisions included in uniform requirements of Office of Management and Budget (OMB) Circulars which govern audits, cost principles and administrative requirements for Federal grants, and contracts and cooperative agreements.

[SEC. 22. (a) There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section.]

SEC. 22. OFFICE OF INTERNATIONAL TRADE.

(a) Except as otherwise provided in this section, the powers, duties, and responsibilities described in this section shall be carried out by the Assistant Administrator for International Trade.

(b) [The Office] *The Office of International Trade*, 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) * * *

* * * * * * *

(h) In carrying out this section, the Administrator shall ensure that the number of full-time equivalent employees of the Office assigned to the one-stop shops referred to in section 2301(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)) is not less than the number of such employees so assigned on January 1, 2003.

[SEC. 23. 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 condition as a disaster under such subsection:

[(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;

[(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 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

[(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.

[SEC. 24. (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 inkind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: *Provided,* That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum, and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made.

[(b) 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 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 1995 through 1997, and all of such sums may remain available until expended.

[(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;

[(2) the term "planting" includes watering, application of fertilizer and herbicides, pruning and shaping, and other subse-

quent care and maintenance for a period of three years after the trees are planted; and

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

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

[SEC. 25. (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.

[(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.

[(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 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.

[(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.

[(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 1995 to carry out the provisions of this section. Such sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.

[SEC. 26. OFFICE OF RURAL AFFAIRS.

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

[(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—

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

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

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

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

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

SEC. 23. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

(a) IN GENERAL.—The Administrator is authorized—

(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and

(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) in accordance with the purposes of this Act.

(b) CAPITAL DIRECTIVE.—The Administrator may determine that failure of a small business lending company to maintain capital at the minimum level established by the Administrator is an unsafe and unsound practice. In addition to any other action authorized by law, the Administrator may issue a directive to a small business lending company that does not comply with the minimum capital requirement requiring the small business lending company to increase capital to level established by the Administrator.

(c) CIVIL ACTION.—If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

(d) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act—

(A) for false statements knowingly made in any written submission required under this Act;

(B) for omission of a material fact from any written submission required under this Act;

(C) for willful or repeated violation of this Act;

(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or

(E) for violation of any cease and desist order of the Administrator under this section.

(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5, United States Code the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

(e) CEASE AND DESIST ORDER.—

(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

(f) PROCEDURE FOR REVOCATION OR SUSPENSION OF LOAN AUTHORITY AND FOR CEASE AND DESIST ORDER.—

(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall

promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

(g) REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIAL.—

(1) DEFINITION.—In this section, the term "management official" means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company's or lender's activities under section 7(a) of this Act.

(2) REMOVAL OF MANAGEMENT OFFICIAL.—

(A) NOTICE.—The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

(i) willfully and knowingly commits a substantial violation of—

(I) this Act;

(II) any regulation issued under this Act;

(III) a final cease-and-desist order under this Act; or

(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(B) CONTENTS OF NOTICE.—A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to section 554, 556, and 557 of title 5, United States Code, will be held thereon.

(C) HEARING.—

(i) TIMING.—A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(I) the management official, and for good cause shown; or

(II) the Attorney General.

(ii) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

(D) ORDER OF REMOVAL.—

(i) IN GENERAL.—In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(ii) EFFECTIVENESS.—An order under clause (i) shall—

(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(3) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

(A) IN GENERAL.—In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act.–

(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A)—

(i) shall take effect upon service of notice under paragraph (2); and

(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(C) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

(4) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

(A) IN GENERAL.—If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

(C) AUTHORITY UPON CONVICTION.—If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

(D) AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

(5) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR A NON-FEDERALLY REGULATED LENDER.—Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

(6) FINAL AGENCY ACTION AND JUDICIAL REVIEW.—

(A) ISSUANCE OF ORDERS.—After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

(B) JUDICIAL REVIEW.—An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

(h) APPOINTMENT OF RECEIVER.—

(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver for assets of the company or lender.

(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

(i) POSSESSION OF ASSETS.—

(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

(j) PENALTIES AND FORFEITURES.—

(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than $100 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(2) The Administration may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the 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. 24. [RESERVED].

SEC. 25. [RESERVED].

SEC. 26. [RESERVED].

SEC. 27. PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.

(a) * * *

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(g) AUTHORIZATION.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, ⟦$5,000,000 for each of fiscal years 2001 through 2003⟧ *$2,000,000 for each of fiscal years 2003 through 2005*. 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)⟧ *section 21(f)(4)(T)*.

⟦SEC. 28. PILOT TECHNOLOGY ACCESS PROGRAM.

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

⟦(b) CRITERIA FOR SELECTION OF CENTERS.—The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of Centers to receive awards on the basis of—

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

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

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

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

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

⟦(1) defraying the cost of access by small businesses to the data base services;

⟦(2) training small businesses in the use of the data base services; and

⟦(3) establishing a public point of access to the data base services.

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

[(e) RENEWAL OF AWARDS.—Awards previously made under section 21A of this Act may be renewed under this section.

[(f) INTERIM REPORT.—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.

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

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

[(i) 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.

[SEC. 29. WOMEN'S BUSINESS CENTER PROGRAM.

[(a) DEFINITIONS.—In this section—

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

[(2) 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;

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

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

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

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

[(A) a women's business center; or

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

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

[(ii) whose services are targeted to women; and

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

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

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

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

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

[(c) CONDITIONS OF PARTICIPATION.—

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

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

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

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

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

[(4) FAILURE TO OBTAIN NON-FEDERAL FUNDING.—If any recipient of assistance fails to obtain the required non-Federal

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

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

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

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

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

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

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

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

[(g) OFFICE OF WOMEN'S BUSINESS OWNERSHIP.—

[(1) ESTABLISHMENT.—There is established within the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises (as defined in section 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.

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

[(A) QUALIFICATION.—The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5, 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

[(IV) increasing the opportunity for access to capital.

[(ii) DUTIES.—The Assistant Administrator shall—

[(I) administer and manage the Women's Business Center program;

[(II) recommend the annual administrative and program budgets for the Office of Women's Business Ownership (including the budget for the Women's Business Center program);

[(III) establish appropriate funding levels therefore;

[(IV) review the annual budgets submitted by each applicant for the Women's Business Center program;

[(V) select applicants to participate in the program under this section;

[(VI) implement this section;

[(VII) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;

[(VIII) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

[(IX) serve as liaison for the National Women's Business Council; and

[(X) advise the Administrator on appointments to the Women's Business Council.

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

[(h) PROGRAM EXAMINATION.—

[(1) IN GENERAL.—The Administration shall—

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

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

[(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) 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 (l) 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.

[(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) MANAGEMENT REPORT.—

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

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

[(A) the number of individuals receiving assistance;

[(B) the number of startup business concerns formed;

[(C) the gross receipts of assisted concerns;

[(D) the employment increases or decreases of assisted concerns;

[(E) to the maximum extent practicable, increases or decreases in profits of assisted concerns; and

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

[(k) AUTHORIZATION OF APPROPRIATIONS.—

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

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

[(i) For fiscal year 2000, 2 percent.

[(ii) For fiscal year 2001, 1.9 percent.

[(iii) For fiscal year 2002, 1.9 percent.

[(iv) For fiscal year 2003, 1.6 percent.

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

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

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

[(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) SUSTAINABILITY PILOT PROGRAM.—

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

section to any private nonprofit organization (or a division thereof)—

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

[(B) that—

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

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

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

[(A) a certification that the applicant—

[(i) is a private nonprofit organization;

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

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

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

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

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

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

[(i) the number of individuals assisted;

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

[(iii) the number of startup business concerns formed;

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

[(i) conducting financial, management, and marketing assistance programs, as described in paragraphs (1), (2), and (3) of subsection (b), 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 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).]

SEC. 28. [RESERVED].

SEC. 29. WOMEN'S BUSINESS CENTER PROGRAM.

(a) DEFINITIONS.—For purposes of this section:

(1) 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.

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

(A) a women's business center; or

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

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

(ii) whose services are targeted to women; and

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

(b) AUTHORITY.—The Administrator may provide financial assistance to private nonprofit organizations to conduct projects which will receive Federal funding for 5 years and those that receive extensions for funding under the conditions set forth in this section 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) SUBMISSION OF 5-YEAR PLANS.—

(1) In response to solicitations made by the Administrator requesting applications for grants to operate women's business centers, each applicant organization initially shall submit a 5-year plan to the Administrator detailing the budget required to provide the services set forth in subsection (b), the services that will be provided, the target population, and the proposed fund-

raising activities to meet the non-Federal contributions mandated by this section.–

(2)(A) Notwithstanding any other provision of law, the Administrator may use such expedited methods of solicitation and award as the Administrator determines to be appropriate to carry out this section.

(B) Any expedited procedures utilized by the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit applications.

(d) CRITERIA.—The Administrator 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 Administrator. The criteria shall include—

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

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

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

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

(e) SELECTION OF GRANTEES.—Assuming other ranking factors to be equal, the Administrator shall make selection of grantees in the following order of preference:

(1) The Administrator shall select from the applications those that demonstrate the greatest ability to serve women who are socially and economically disadvantaged whether located in standard metropolitan statistical areas or rural areas and without regard to the location of an existing center.

(2) If, in the opinion of the Administrator, 2 or more applicants have the same rank with respect to service of socially and economically disadvantaged women, the Administrator shall prefer the applicant that proposes to serve part of a State in a State that was served by a higher number of women's business centers at any time in the last 5 years than the number of such centers that serve such State at the time of selection.

(3) If no application has been received under which an award can be made pursuant to paragraph (2), the Administrator then shall select an applicant that proposes to serve a standard metropolitan statistical area that was served by a higher number of women's business centers at any time in the last 5 years than the number of such centers that serve such area at the time of selection.

(f) ADMINISTRATOR FUNDING OF GRANTEES.—The Administrator, except as otherwise provided by subsection (m), shall provide funding according to the following formula:

(1) During the first and second years of operation, two dollars in Federal funds for each dollar in matching funds as required by subsection (g).

(2) During the third, fourth, and fifth years, one dollar in Federal funds for each dollar in matching funds as required by subsection (g).

(3) The grant agreement shall provide for the mechanism of disbursement of Federal funds by the Administrator including payment in lump sum or installments, in advance, or by way of reimbursement. The Administrator may disburse up to 25 percent of each year's Federal share to a grantee before the non-Federal sector matching funds are obtained.

(4) If a grantee fails to obtain the required non-Federal contribution at any time during the life of the grant, such grantee shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of the term of the grant, or for any other women's business center which it operates or for which it has applied to establish.

(5) Prior to approving assistance to a grantee for any other projects, the Administrator shall specifically determine whether the Administrator believes that the grantee will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(6) The authority of the Administrator to provide funding pursuant to this section shall only be in effect for each fiscal year and only to the extent and in amounts as are provided for in advance of appropriations Acts.

(g) MATCHING FUNDS.—

(1) Except as provided by subsection (n), each grantee, shall be required to obtain matching contributions according to the formula set forth in subsection (f).

(2) No more than one-half of such contributions may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(3) The restriction in paragraph (2) shall apply to all grantees under this section.

(h) 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 Administrator.

(i) ANNUAL PROGRAM EXAMINATION.—

(1) The Administrator 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 Administrator—

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

(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 (g) and, with respect to any in-kind contributions described in that subsection that were used to satisfy the matching requirements, verification of the existence and valuation of those contributions; and

(iii) a review of the grantee's success in fundraising plan and whether that needs revision to ensure that the grantee can sustain operations after five years; 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) In conducting such annual examination, the Administrator shall limit the total number of site visits to a particular women's business center to no more than 2 per year, unless the Administrator determines that extraordinary circumstances, as defined in regulations promulgated by the Administrator, requires more than 2 such visits.

(j) RENEWAL OF FUNDING AND TERMINATION.—

(1) On an annual basis, commencing with the end of the grantee's second year of operation of a women's business center, the Administrator, based on the program review made pursuant to subsection (i), shall determine whether to continue funding the grantee according to the formula set forth in subsection (f). In determining whether to renew funding during any year of the life of the project operated by the grantee, the Administrator—

(A) shall consider the results of each annual examination of the center under subsection (i); and

(B) may withhold funding for the following year or years, if the Administrator determines that—

(i) the grantee has failed to provide for any women's business center which it operates any information required to by the Administrator to perform the annual program examination required under subsection (i), or the information is deemed to be inadequate to conduct the annual examination under subsection (i);

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

(iii) the Administrator determines, pursuant to regulations adopted by the Administrator and codified in the Code of Federal Regulations, that the grantee has failed to deliver the services required by subsection (b) taking into account current economic conditions and the target population served by the grantee.

(2) The Administrator shall not require, as a condition of initial or continued funding, and a grant agreement shall not include a requirement that a women's business center operated by the grantee serve a particular number of women with respect to loans under section 7 of this Act or title V of the Small Business Investment Act of 1958.

(3) The Administrator shall not fund a grantee for the operation of a women's business center that has been in operation for 5 years unless it applies for and receives an extension of Federal funding pursuant to subsection (m) or the grantee reapplies as a new applicant pursuant to subsection (c) and the

Administrator selects the grantee pursuant to subsections (d) and (e).

(4) If the Administrator makes a determination pursuant to subparagraph (1)(B)(iii), prior to the withholding of any funds, the Administrator shall provide the grantee with a written notification of the reasons and shall provide the grantee with the opportunity for a hearing pursuant to sections 554, 556, and 557 of title 5, United States Code.

(5) The Administrator shall make a final decision based on the record of the hearing and such decision shall be made within 60 days of the notification provided in paragraph (4).

(k) MANAGEMENT REPORT.—

(1) The Administrator shall prepare and submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the effectiveness of all projects, including those operated pursuant to extensions of Federal funding, conducted under this section.

(2) 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;

(F) the number of hours of counseling and training provided and workshops conducted; and

(G) the most recent analysis, as required under subsection (i)(1)(B), and the subsequent determination made by the Administrator under that subsection.

(l) AUTHORIZATION OF APPROPRIATIONS.—

(1) There is authorized to be appropriated—

(A) $ 16,000,000 for fiscal year 2004; and

(B) $ 17,500,000 for fiscal year 2005.

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

(B) Of the amount made available under this subsection for a fiscal year, 1.75 percent shall be available for costs associated with selection, monitoring, and oversight.

(3)(A) Subject to subparagraph (B), 30.2 percent of the funds authorized pursuant to this subsection shall be reserved to provide extensions of Federal funding to grantees that meet the standards set forth in subsection (m).

(B) If the Administrator does not distribute all funds reserved for extensions of Federal funding pursuant to subsection (m), the Administrator shall utilize the unawarded funds to grantees according to the priorities set forth in paragraphs (1), (2), and (3) of subsection (e).

(m) EXTENSIONS OF FEDERAL FUNDING AFTER FIVE YEARS.—

(1) The Administrator is authorized to extend Federal funding to any grantee for 5 years after the term of the original grant ends.

(2) In order to receive an extension of Federal funding, the grantee shall submit an application in the fourth year of its operation of a women's business center and has met all of the criteria set by the Administrator for continued funding in its fifth year.

(n) SELECTION OF GRANTEES FOR EXTENSIONS OF FEDERAL FUNDING.—

(1) The Administrator shall review each application submitted under paragraph (2) and select grantees for extensions of Federal funding who have—

(A) a demonstrated record of serving predominantly socially and economically disadvantaged women; and

(B) are unable to meet their matching fund requirements due to their target populations.

(2) If the Administrator does not receive any applications that meet the standards of subparagraph (A), the Administrator shall select grantees under this subsection according to the following preferences:

(A) Those that meet the matching requirements in subsection (f)(2).

(B) If there are no applicants that meet that standard in subparagraph (A) then based on criteria developed by the Administrator to rank applicants for extensions of Federal funding.

(3) The Administrator shall maintain a copy of each application submitted under this subsection for not less than 10 years.

(4) In awarding an extension of Federal funding, the Administrator may condition such award on the grantee obtaining a match requirement at least equal to 2 non-Federal dollars for each dollar of Federal funding except that grantees meeting the standards of paragraph (1)(A) shall only be required to match each Federal dollar with a non-Federal dollar.

* * * * * * *

[SEC. 31. HUBZONE PROGRAM.

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

[(b) ELIGIBLE CONTRACTS.—

[(1) DEFINITIONS.—In this subsection—

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

[(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).

[(2) AUTHORITY OF CONTRACTING OFFICER.—Notwithstanding any other provision of law—

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

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

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

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

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

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

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

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

[(3) PRICE EVALUATION PREFERENCE IN FULL AND OPEN COMPETITIONS.—

[(A) IN GENERAL.—Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small 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.

[(B) PROCUREMENT OF COMMODITIES.—For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

[(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

[(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

[(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

[(C) TREATMENT OF PREFERENCE.—A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

[(4) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, 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—

[(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).

[(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—

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

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

[(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program established by this section $10,000,000 for each of fiscal years 2001 through 2003.

[SEC. 32. 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 Adminis-

trator for Veterans Business Development (in this section referred to as the "Associate Administrator") appointed under section 4(b)(1).

[(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.]

SEC. 31. HUBZONE PROGRAM.

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

(b) ELIGIBLE CONTRACTS.—

(1) AUTHORITY OF CONTRACTING OFFICER.—

(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 may 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.

(2) PRICE EVALUATION PREFERENCE IN FULL AND OPEN COMPETITIONS.—

(A) IN GENERAL.—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 con-

cern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B) FULL AND OPEN COMPETITION.—For purposes of this paragraph, 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).

(3) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided in paragraph (1) or (2), 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—

(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).

(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—

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

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

(d) LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(1) once the Administrator has made the certification required by subsection 3(p)(5)(A)(i) of this Act regarding a qualified HUBZone small business concern and has determined that subsection 3(p)(5)(B)does not apply to that concern, include the

name, address, and type of business with respect to each such small business concern;

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

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

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program established by this section $5,000,000 for each of fiscal years 2004 through 2005.

SEC. 32. [RESERVED].

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[SEC. 36. All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.]

SEC. 36. SEVERABILITY.

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SECTION 237 OF THE DISASTER RELIEF ACT OF 1970

[AID TO MAJOR SOURCES OF EMPLOYMENT

[SEC. 237. (a) The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulation promulgated pursuant thereto.

[(b) Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 208 of this Act. Any loan made under this section shall be subject to the interest requirements of section 234 of this Act, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 234 of this Act.]

SECTION 7102 OF THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994

SEC. 7102. CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

(a) * * *

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(c) TERMINATION.—This section shall cease to be effective at the end of [September 30, 2003] *September 30, 2005*.

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