

§§197 to 197d. Repealed. Aug. 13, 1946, ch. 957, title XI, §1131(54), 60 Stat. 1039

Section 197, act Mar. 3, 1927, ch. 365, §1, 44 Stat. 1394, related to establishment of Foreign Commerce Service.

Section 197a, act Mar. 3, 1927, ch. 365, §2, 44 Stat. 1394, related to duties of officers.

Section 197b, acts Mar. 3, 1927, ch. 365, §3, 44 Stat. 1394; Apr. 12, 1930, ch. 142, 46 Stat. 163, related to appointment of officers, assignments for duty, and allowances.

Section 197c, act Mar. 3, 1927, ch. 365, §4, 44 Stat. 1395, related to employment of clerks and assistants.

Section 197d, act Mar. 3, 1927, ch. 365, §5, 44 Stat. 1396, related to status of officer while serving abroad.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective three months from Aug. 13, 1946, see section 1141 of act Aug. 13, 1946.

§197e. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 647

Section, act Mar. 3, 1927, ch. 365, §6, 44 Stat. 1396, provided for travel and subsistence allowance to officers, employees, etc., of Bureau of Foreign and Domestic Commerce on duty abroad or away from duty post.

§197f. Repealed. Aug. 13, 1946, ch. 957, title XI, §1131(54), 60 Stat. 1039

Section, act Mar. 3, 1927, ch. 365, §7, 44 Stat. 1396, related to availability of appropriation during fiscal year ending June 30, 1926, and thereafter for the Department of Commerce for commercial attachés in Europe, South or Central America and elsewhere.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective three months from Aug. 13, 1946, see section 1141 of act Aug. 13, 1946.

§198. Repealed. Oct. 10, 1940, ch. 851, §4, 54 Stat. 1111

Section, acts Jan. 25, 1929, ch. 102, title III, 45 Stat. 1119; Apr. 18, 1930, ch. 184, title III, 46 Stat. 198; Feb. 23, 1931, ch. 280, title III, 46 Stat. 1334; July 1, 1932, ch. 361, title III, 47 Stat. 502; Mar. 1, 1933, ch. 144, title III, 47 Stat. 1393; Apr. 7, 1934, ch. 104, title III, 48 Stat. 551; Mar. 22, 1935, ch. 39, §1, 49 Stat. 90; May 15, 1936, ch. 405, §1, 49 Stat. 1336; June 16, 1937, ch. 359, title III, §1, 50 Stat. 287; Apr. 27, 1938, ch. 180, title III, §1, 52 Stat. 273; June 29, 1939, ch. 248, title III, 53 Stat. 909, related to purchases of supplies and equipment on the open market.

CHAPTER 6—WEIGHTS AND MEASURES AND STANDARD TIME

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SUBCHAPTER I—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

§201. Sets of standard weights and measures for agricultural colleges

The Secretary of Commerce is directed to cause a complete set of all the weights and measures adopted as standards to be delivered to the governor of each State in the Union for the use of agricultural colleges in the States, respectively, which have received a grant of lands from the United States, and also one set of the same for the use of the Smithsonian Institution: *Provided*, That the cost of each set shall not exceed \$200.

(Mar. 3, 1881, No. 26, 21 Stat. 521; Feb. 14, 1903, ch. 552, §§4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor, and renamed Department of Commerce and Labor as Department of Commerce.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

APPROPRIATION

A sum sufficient to carry out the provisions of this section was appropriated out of any money in the Treasury not otherwise appropriated by act Mar. 3, 1881.

DISTRIBUTION TO STATES

The Secretary of the Treasury was directed to cause a complete set of all the weights and measures adopted as standards to be delivered to the governor of each state for the use of the states by Res. June 14, 1836, No. 7, 5 Stat. 133, which provision was not incorporated into the Revised Statutes.

§202. Repairs to standards

Such necessary repairs and adjustments shall be made to the standards furnished to the several States and Territories as may be requested by the governors thereof, and also to standard weights and measures that have been or may be supplied to United States customhouses and other offices of the United States under Act of Congress, when requested by the Secretary of Commerce.

(July 11, 1890, ch. 667, §1, 26 Stat. 242; Feb. 14, 1903, ch. 552, §§4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor and renamed Department of Commerce and Labor as Department of Commerce.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

§203. Replacing lost standard weights and measures; cost

The Secretary of Commerce is authorized and directed to furnish precise copies of standard weights and measures, bearing the seal of the National Institute of Standards and Technology and accompanied by a suitable certificate, to any State, Territory, or institution heretofore furnished with the same, upon application in writing by the governor in the case of a State or Territory, or by the official head in the case of an institution, setting forth that the copies of standards applied for are to replace similar ones heretofore furnished, in accordance with law, which have been lost or destroyed: *Provided*, That the applicant shall, before the said standards are delivered, first deposit with the Secretary of Commerce the amount of money necessary to defray all expenses incurred by the National Institute of Standards and Technology in furnishing the same, which amount shall be covered into the Treasury of the United States to the credit of miscellaneous receipts as soon as the weights or measures are delivered for transportation into the hands of such persons as are designated by the officers ordering the same.

(Aug. 18, 1894, ch. 301, §1, 28 Stat. 383; Mar. 3, 1901, ch. 872, §1, 31 Stat. 1449; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "Bureau of Standards" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor and renamed Department of Commerce and Labor as Department of Commerce.

Act Mar. 3, 1901, provided that Office of Standard Weights and Measures should thereafter be known as National Bureau of Standards.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

§204. Metric system authorized

It shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objection because the weights or measures expressed or referred to therein are weights or measures of the metric system.

(R.S. §3569.)

EDITORIAL NOTES

CODIFICATION

R.S. §3569 derived from act July 28, 1866, ch. 301, §1, 14 Stat. 339.

STATUTORY NOTES AND RELATED SUBSIDIARIES

STUDY OF METRIC SYSTEM BY THE SECRETARY OF COMMERCE

Pub. L. 90–472, Aug. 9, 1968, 82 Stat. 693, authorized the Secretary of Commerce to conduct a program of

investigation, research, and survey to determine the impact of increasing worldwide use of the metric system on the United States; to appraise the desirability and practicability of increasing the use of metric weights and measures in the United States; to study the feasibility of retaining and promoting by international use of dimensional and other engineering standards based on the customary measurement units of the United States; and to evaluate the costs and benefits of alternative courses of action which might be feasible for the United States. The Secretary was directed to submit to the Congress such interim reports as he deemed desirable, and within three years after Aug. 9, 1968, a full and complete report of the findings made under the study, together with such recommendations as he considered to be appropriate and in the best interests of the United States. By its own terms, the Act expired thirty days after the submission of the final report.

§205. Metric system defined

The metric system of measurement shall be defined as the International System of Units as established in 1960, and subsequently maintained, by the General Conference of Weights and Measures, and as interpreted or modified for the United States by the Secretary of Commerce. (R.S. §3570; Pub. L. 110–69, title III, §3013(c)(1), Aug. 9, 2007, 121 Stat. 598.)

EDITORIAL NOTES

CODIFICATION

R.S. §3570 derived from act July 28, 1866, ch. 301, §2, 14 Stat. 339, 340.

AMENDMENTS

2007—Pub. L. 110–69 amended section generally. Prior to amendment, section read as follows: "The tables in the schedule annexed shall be recognized in the construction of contracts and in all legal proceedings as establishing, in terms of the weights and measures on June 22, 1874, in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and the tables may lawfully be used for computing, determining, and expressing in customary weights and measures the weights and measures of the metric system."

SUBCHAPTER II—METRIC CONVERSION

§205a. Congressional statement of findings

The Congress finds as follows:

(1) The United States was an original signatory party to the 1875 Treaty of the Meter (20 Stat. 709), which established the General Conference of Weights and Measures, the International Committee of Weights and Measures and the International Bureau of Weights and Measures.

(2) Although the use of metric measurement standards in the United States has been authorized by law since 1866 (Act of July 28, 1866; 14 Stat. 339), this Nation today is the only industrially developed nation which has not established a national policy of committing itself and taking steps to facilitate conversion to the metric system.

(3) World trade is increasingly geared towards the metric system of measurement.

(4) Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and is sometimes excluded when it is unable to deliver goods which are measured in metric terms.

(5) The inherent simplicity of the metric system of measurement and standardization of weights and measures has led to major cost savings in certain industries which have converted to that system.

(6) The Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement.

(7) The metric system of measurement can provide substantial advantages to the Federal Government in its own operations.

(Pub. L. 94-168, §2, Dec. 23, 1975, 89 Stat. 1007; Pub. L. 100-418, title V, §5164(a), Aug. 23, 1988, 102 Stat. 1451.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of July 28, 1866; 14 Stat. 339, referred to in par. (2), is predecessor of R.S. §3569 authorizing use of the metric system, which is classified to section 204 of this title.

AMENDMENTS

1988—Pars. (3) to (7). Pub. L. 100-418 added pars. (3) to (7).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-289, §1, Oct. 11, 1996, 110 Stat. 3411, provided that: "This Act [enacting section 205l of this title, amending sections 205c and 205l of this title, and enacting provisions set out as notes under this section and section 205c of this title] may be cited as the 'Savings in Construction Act of 1996'."

SHORT TITLE

Pub. L. 94-168, §1, Dec. 23, 1975, 89 Stat. 1007, provided: "That this Act [enacting this subchapter] may be cited as the 'Metric Conversion Act of 1975'."

CONGRESSIONAL STATEMENT OF FINDINGS; METRIC CONVERSION IN FEDERAL CONSTRUCTION PROJECTS

Pub. L. 104-289, §2, Oct. 11, 1996, 110 Stat. 3411, provided that: "The Congress finds the following:

"(1) The Metric Conversion Act of 1975 [15 U.S.C. 205a *et seq.*] was enacted in order to set forth the policy of the United States to convert to the metric system. Section 3 of that Act [15 U.S.C. 205b] requires that each Federal agency use the metric system of measurements in its procurement, grants, and other business-related activities, unless that use is likely to cause significant cost or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

"(2) In accordance with that Act and Executive Order 12770, of July 25, 1991 [set out below], Federal agencies increasingly construct new Federal buildings in round metric dimensions. As a result, companies that wish to bid on Federal construction projects increasingly are asked to supply materials or products in round metric dimensions.

"(3) While the Metric Conversion Act of 1975 currently provides an exemption to metric usage when impractical or when such usage will cause economic inefficiencies, amendments are warranted to ensure that the use of specific metric components in metric construction projects do not increase the cost of Federal buildings to the taxpayers."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12770. METRIC USAGE IN FEDERAL GOVERNMENT PROGRAMS

Ex. Ord. No. 12770, July 25, 1991, 56 F.R. 35801, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Metric Conversion Act of 1975, Public Law 94-168 (15 U.S.C. 205a *et seq.*) ("the Metric Conversion Act"), as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418 ("the Trade and Competitiveness Act"), and in order to implement the congressional designation of the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, it is hereby ordered as follows:

SECTION 1. *Coordination by the Department of Commerce.* (a) The Secretary of Commerce ("Secretary") is designated to direct and coordinate efforts by Federal departments and agencies to implement Government metric usage in accordance with section 3 of the Metric Conversion Act (15 U.S.C. 205b), as amended by section 5164(b) of the Trade and Competitiveness Act.

(b) In furtherance of his duties under this order, the Secretary is authorized:

(1) to charter an Interagency Council on Metric Policy ("ICMP"), which will assist the Secretary in coordinating Federal Government-wide implementation of this order. Conflicts and questions regarding implementation of this order shall be resolved by the ICMP. The Secretary may establish such subcommittees and subchairs within this Council as may be necessary to carry out the purposes of this order.[:]

(2) to form such advisory committees representing other interests, including State and local governments and the business community, as may be necessary to achieve the maximum beneficial effects of this order; and

(3) to issue guidelines, to promulgate rules and regulations, and to take such actions as may be necessary to carry out the purposes of this order. Regulations promulgated by the Secretary shall function as policy guidelines for other agencies and departments.

(c) The Secretary shall report to the President annually regarding the progress made in implementing this order. The report shall include:

(1) an assessment of progress made by individual Federal agencies towards implementing the purposes underlying this order;

(2) an assessment of the effect that this order has had on achieving the national goal of establishing the metric system as the preferred system of weights and measures for United States trade and commerce; and

(3) on October 1, 1992, any recommendations which the Secretary may have for additional measures, including proposed legislation, needed to achieve the full economic benefits of metric usage.

SEC. 2. Department and Agency Responsibilities. All executive branch departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order. Consistent with this mission, the head of each executive department and agency shall:

(a) use, to the extent economically feasible by September 30, 1992, or by such other date or dates established by the department or agency in consultation with the Secretary of Commerce, the metric system of measurement in Federal Government procurements, grants, and other business-related activities. Other business-related activities include all use of measurement units in agency programs and functions related to trade, industry, and commerce.

(1) Metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(2) Heads of departments and agencies shall establish an effective process for a policy-level and program-level review of proposed exceptions to metric usage. Appropriate information about exceptions granted shall be included in the agency annual report along with recommendations for actions to enable future metric usage.

(b) seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications. The transition to use of metric units in Government publications should be made as publications are revised on normal schedules or new publications are developed, or as metric publications are required in support of metric usage pursuant to paragraph (a) of this section.

(c) seek the appropriate aid, assistance, and cooperation of other affected parties, including other Federal, State, and local agencies and the private sector, in implementing this order. Appropriate use shall be made of governmental, trade, professional, and private sector metric coordinating groups to secure the maximum benefits of this order through proper communication among affected sectors.

(d) formulate metric transition plans for the department or agency which shall incorporate the requirements of the Metric Conversion Act and this order, and which shall be approved by the department or agency head and be in effect by November 30, 1991. Copies of approved plans shall be forwarded to the Secretary of Commerce. Such metric transition plans shall specify, among other things:

(1) the total scope of the metric transition task for that department or agency, including firm dates for all metric accomplishment milestones for the current and subsequent fiscal year;

(2) plans of the department or agency for specific initiatives to enhance cooperation with industry, especially small business, as it voluntarily converts to the metric system, and with all affected parties in undertaking the requirements of paragraph (a) of this section; and

(3) specific steps and associated schedules through which the department or agency will seek to increase understanding of the metric system through educational information and guidance, and in department or agency publications.

(e) designate a senior-level official as the Metric Executive for the department or agency to assist the head of each executive department or agency in implementing this order. The responsibilities of the Metric Executive shall include, but not be limited to:

(1) acting as the department's or agency's policy-level representative to the ICMP and as a liaison with other government agencies and private sector groups:

(2) management oversight of department or agency outreach and response to inquiries and questions from affected parties during the transition to metric system usage; and

(3) management oversight of preparation of the department's or agency's metric transition plans and progress reports, including the Annual Metric Report required by 15 U.S.C. 205j and OMB Circular A-11.

(4) preparation by June 30, 1992, of an assessment of agency progress and problems, together with recommendations for steps to assure successful implementation of the Metric Conversion Act. The assessment and recommendations shall be approved by the head of the department or agency and provided to the Secretary by June 30, 1992, for inclusion in the Secretary's October 1, 1992, report on implementation of this order.

SEC. 3. *Application of Resources.* The head of each executive department and agency shall be responsible for implementing and applying the necessary resources to accomplish the goals set forth in the Metric Conversion Act and this order.

SEC. 4. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

GEORGE BUSH.

§205b. Declaration of policy

It is therefore the declared policy of the United States—

(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce;

(2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units;

(3) to seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications; and

(4) to permit the continued use of traditional systems of weights and measures in non-business activities.

(Pub. L. 94-168, §3, Dec. 23, 1975, 89 Stat. 1007; Pub. L. 100-418, title V, §5164(b), Aug. 23, 1988, 102 Stat. 1452.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-418 amended section generally. Prior to amendment, section read as follows: "It is therefore declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States and to establish a United States Metric Board to coordinate the voluntary conversion to the metric system."

STATUTORY NOTES AND RELATED SUBSIDIARIES

IMPLEMENTATION OF METRIC USAGE IN FEDERAL GOVERNMENT

Secretary of Commerce designated to direct and coordinate implementation of Government metric usage, see section 1 of Ex. Ord. No. 12770, July 25, 1991, 56 F.R. 35801, set out as a note under section 205a of this title.

§205c. Definitions

As used in this subchapter, the term—

(1) "Board" means the United States Metric Board, established under section 205d of this title;

(2) "engineering standard" means a standard which prescribes (A) a concise set of conditions and requirements that must be satisfied by a material, product, process, procedure, convention, or test method; and (B) the physical, functional, performance and/or conformance characteristics thereof;

(3) "international standard or recommendation" means an engineering standard or recommendation which is (A) formulated and promulgated by an international organization and (B) recommended for adoption by individual nations as a national standard;

(4) "metric system of measurement" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce;

(5) "full and open competition" has the same meaning as defined in section 107 of title 41;

(6) "total installed price" means the price of purchasing a product or material, trimming or otherwise altering some or all of that product or material, if necessary to fit with other building components, and then installing that product or material into a Federal facility;

(7) "hard-metric" means measurement, design, and manufacture using the metric system of measurement, but does not include measurement, design, and manufacture using English system measurement units which are subsequently reexpressed in the metric system of measurement;

(8) "cost or pricing data or price analysis" has the meaning given such terms in section 3501(a) of title 41; and

(9) "Federal facility" means any public building (as defined under section 3301(a) of title 40 ¹ and shall include any Federal building or construction project—

(A) on lands in the public domain;

(B) on lands used in connection with Federal programs for agriculture research, recreation, and conservation programs;

(C) on or used in connection with river, harbor, flood control, reclamation, or power projects;

(D) on or used in connection with housing and residential projects;

(E) on military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense);

(F) on installations of the Department of Veteran ² Affairs used for hospital or domiciliary purposes; or

(G) on lands used in connection with Federal prisons,

but does not include (i) any Federal building or construction project the exclusion of which the President deems to be justified in the public interest, or (ii) any construction project or building owned or controlled by a State government, local government, Indian tribe, or any private entity.

(Pub. L. 94–168, §4, Dec. 23, 1975, 89 Stat. 1007; Pub. L. 104–289, §3, Oct. 11, 1996, 110 Stat. 3411.)

EDITORIAL NOTES

CODIFICATION

In par. (5), "section 107 of title 41" substituted for "section 403(6) of title 41, United States Code" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In par. (8), "section 3501(a) of title 41" substituted for "section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In par. (9), "section 3301(a) of title 40" substituted for "section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1996—Pars. (5) to (9). Pub. L. 104–289 added pars. (5) to (9).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT; SAVINGS PROVISION

Pub. L. 104-289, §6, Oct. 11, 1996, 110 Stat. 3415, provided that:

"(a) EFFECTIVE DATE.—This Act [See Short Title of 1996 Amendment note set out under section 205a of this title] and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act [Oct. 11, 1996].

"(b) SAVINGS PROVISIONS.—This Act shall not apply to contracts awarded and solicitations issued on or before the effective date of this Act, unless the head of a Federal agency makes a written determination in his or her sole discretion that it would be in the public interest to apply one or more provisions of this Act or its amendments to these existing contracts or solicitations."

¹ *So in original. Probably should be followed by a closing parenthesis.*

² *So in original. Probably should be "Veterans".*

§205d. United States Metric Board

(a) Establishment

There is established, in accordance with this section, an independent instrumentality to be known as a United States Metric Board.

(b) Membership; Chairman; appointment of members; term of office; vacancies

The Board shall consist of 17 individuals, as follows:

(1) the Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) sixteen members who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) one to be selected from lists of qualified individuals recommended by engineers and organizations representative of engineering interests;

(B) one to be selected from lists of qualified individuals recommended by scientists, the scientific and technical community, and organizations representative of scientists and technicians;

(C) one to be selected from a list of qualified individuals recommended by the National Association of Manufacturers or its successor;

(D) one to be selected from lists of qualified individuals recommended by the United States Chamber of Commerce, or its successor, retailers, and other commercial organizations;

(E) two to be selected from lists of qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations or its successor, who are representative of workers directly affected by metric conversion, and by other organizations representing labor;

(F) one to be selected from a list of qualified individuals recommended by the National Governors Conference, the National Council of State Legislatures, and organizations representative of State and local government;

(G) two to be selected from lists of qualified individuals recommended by organizations representative of small business;

(H) one to be selected from lists of qualified individuals representative of the construction industry;

(I) one to be selected from a list of qualified individuals recommended by the National Conference on Weights and Measures and standards making organizations;

(J) one to be selected from lists of qualified individuals recommended by educators, the educational community, and organizations representative of educational interests; and

(K) four at-large members to represent consumers and other interests deemed suitable by the President and who shall be qualified individuals.

As used in this subsection, each "list" shall include the names of at least three individuals for each applicable vacancy. The terms of office of the members of the Board first taking office shall expire as designated by the President at the time of nomination; five at the end of the 2d year; five at the end of the 4th year; and six at the end of the 6th year. The term of office of the Chairman of such Board shall be 6 years. Members, including the Chairman, may be appointed to an additional term of 6 years, in the same manner as the original appointment. Successors to members of such Board shall be appointed in the same manner as the original members and shall have terms of office expiring 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Beginning 45 days after the date of incorporation of the Board, six members of such Board shall constitute a quorum for the transaction of any function of the Board.

(c) Compulsory powers

Unless otherwise provided by the Congress, the Board shall have no compulsory powers.

(d) Termination

The Board shall cease to exist when the Congress, by law, determines that its mission has been accomplished.

(Pub. L. 94-168, §5, Dec. 23, 1975, 89 Stat. 1007.)

§205e. Functions and powers of Board

It shall be the function of the Board to devise and carry out a broad program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of implementing the policy set forth in this subchapter. In carrying out this program, the Board shall—

(1) consult with and take into account the interests, views, and conversion costs of United States commerce and industry, including small business; science; engineering; labor; education; consumers; government agencies at the Federal, State, and local level; nationally recognized standards developing and coordinating organizations; metric conversion planning and coordinating groups; and such other individuals or groups as are considered appropriate by the Board to the carrying out of the purposes of this subchapter. The Board shall take into account activities underway in the private and public sectors, so as not to duplicate unnecessarily such activities;

(2) provide for appropriate procedures whereby various groups, under the auspices of the Board, may formulate, and recommend or suggest, to the Board specific programs for coordinating conversion in each industry and segment thereof and specific dimensions and configurations in the metric system and in other measurements for general use. Such programs, dimensions, and configurations shall be consistent with (A) the needs, interests, and capabilities of manufacturers (large and small), suppliers, labor, consumers, educators, and other interested groups, and (B) the national interest;

(3) publicize, in an appropriate manner, proposed programs and provide an opportunity for interested groups or individuals to submit comments on such programs. At the request of interested parties, the Board, in its discretion, may hold hearings with regard to such programs. Such comments and hearings may be considered by the Board;

(4) encourage activities of standardization organizations to develop or revise, as rapidly as practicable, engineering standards on a metric measurement basis, and to take advantage of opportunities to promote (A) rationalization or simplification of relationships, (B) improvements of design, (C) reduction of size variations, (D) increases in economy, and (E) where feasible, the efficient use of energy and the conservation of natural resources;

(5) encourage the retention, in new metric language standards, of those United States engineering designs, practices, and conventions that are internationally accepted or that embody superior technology;

(6) consult and cooperate with foreign governments, and intergovernmental organizations, in collaboration with the Department of State, and, through appropriate member bodies, with private international organizations, which are or become concerned with the encouragement and coordination of increased use of metric measurement units or engineering standards based on such units, or both. Such consultation shall include efforts, where appropriate, to gain international recognition for metric standards proposed by the United States, and, during the United States conversion, to encourage retention of equivalent customary units, usually by way of dual dimensions, in international standards or recommendations;

(7) assist the public through information and education programs, to become familiar with the meaning and applicability of metric terms and measures in daily life. Such programs shall include—

(A) public information programs conducted by the Board, through the use of newspapers, magazines, radio, television, and other media, and through talks before appropriate citizens' groups, and trade and public organizations;

(B) counseling and consultation by the Secretary of Education; the Secretary of Labor; the Administrator of the Small Business Administration; and the Director of the National Science Foundation, with educational associations, State and local educational agencies, labor education committees, apprentice training committees, and other interested groups, in order to assure (i) that the metric system of measurement is included in the curriculum of the Nation's educational institutions, and (ii) that teachers and other appropriate personnel are properly trained to teach the metric system of measurement;

(C) consultation by the Secretary of Commerce with the National Conference of Weights and Measures in order to assure that State and local weights and measures officials are (i) appropriately involved in metric conversion activities and (ii) assisted in their efforts to bring about timely amendments to weights and measures laws; and

(D) such other public information activities, by any Federal agency in support of this subchapter, as relate to the mission of such agency;

(8) collect, analyze, and publish information about the extent of usage of metric measurements; evaluate the costs and benefits of metric usage; and make efforts to minimize any adverse effects resulting from increasing metric usage;

(9) conduct research, including appropriate surveys; publish the results of such research; and recommend to the Congress and to the President such action as may be appropriate to deal with any unresolved problems, issues, and questions associated with metric conversion, or usage, such problems, issues, and questions may include, but are not limited to, the impact on workers (such as costs of tools and training) and on different occupations and industries, possible increased costs to consumers, the impact on society and the economy, effects on small business, the impact on the international trade position of the United States, the appropriateness of and methods for using procurement by the Federal Government as a means to effect conversion to the metric system, the proper conversion or transition period in particular sectors of society, and consequences for national defense;

(10) submit annually to the Congress and to the President a report on its activities. Each such report shall include a status report on the conversion process as well as projections for the conversion process. Such report may include recommendations covering any legislation or executive action needed to implement the the ¹ programs of conversion accepted by the Board. The Board may also submit such other reports and recommendations as it deems necessary; and

(11) submit to the Congress and to the President, not later than 1 year after the date of enactment of the Act making appropriations for carrying out this subchapter, a report on the need to provide an effective structural mechanism for converting customary units to metric units in statutes, regulations, and other laws at all levels of government, on a coordinated and timely basis,

in response to voluntary conversion programs adopted and implemented by various sectors of society under the auspices and with the approval of the Board. If the Board determines that such a need exists, such report shall include recommendations as to appropriate and effective means for establishing and implementing such a mechanism.

(Pub. L. 94–168, §6, Dec. 23, 1975, 89 Stat. 1008; Pub. L. 96–88, title III, §301, title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary of Education" substituted for "Secretary of Health, Education, and Welfare" in par. (7)(B) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in par. (10) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 194 of House Document No. 103–7.

¹ So in original.

§205f. Duties of Board

In carrying out its duties under this subchapter, the Board may—

- (1) establish an Executive Committee, and such other committees as it deems desirable;
- (2) establish such committees and advisory panels as it deems necessary to work with the various sectors of the Nation's economy and with Federal and State governmental agencies in the development and implementation of detailed conversion plans for those sectors. The Board may reimburse, to the extent authorized by law, the members of such committees;
- (3) conduct hearings at such times and places as it deems appropriate;
- (4) enter into contracts, in accordance with chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties;
- (5) delegate to the Executive Director such authority as it deems advisable; and
- (6) perform such other acts as may be necessary to carry out the duties prescribed by this subchapter.

(Pub. L. 94–168, §7, Dec. 23, 1975, 89 Stat. 1011.)

EDITORIAL NOTES

CODIFICATION

In par. (4), "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

§205g. Gifts, donations and bequests to Board

(a) Authorization; deposit into Treasury and disbursement

The Board may accept, hold, administer, and utilize gifts, donations, and bequests of property,

both real and personal, and personal services, for the purpose of aiding or facilitating the work of the Board. Gifts and bequests of money, and the proceeds from the sale of any other property received as gifts or requests, shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Board.

(b) Federal income, estate, and gift taxation of property

For purpose of Federal income, estate, and gift taxation, property accepted under subsection (a) of this section shall be considered as a gift or bequest to or for the use of the United States.

(c) Investment of moneys; disbursement of accrued income

Upon the request of the Board, the Secretary of the Treasury may invest and reinvest, in securities of the United States, any moneys contained in the fund authorized in subsection (a) of this section. Income accruing from such securities, and from any other property accepted to the credit of such fund, shall be dispersed upon the order of the Board.

(d) Reversion to Treasury of unexpended funds

Funds not expended by the Board as of the date when it ceases to exist, in accordance with section 205d(d) of this title, shall revert to the Treasury of the United States as of such date.

(Pub. L. 94-168, §8, Dec. 23, 1975, 89 Stat. 1011.)

§205h. Compensation of Board members; travel expenses

Members of the Board who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate not to exceed the daily rate currently being paid grade 18 of the General Schedule (under section 5332 of title 5), including traveltime. While so serving, on the business of the Board away from their homes or regular places of business, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons employed intermittently in the Government service. Payments under this section shall not render members of the Board employees or officials of the United States for any purpose. Members of the Board who are in the employ of the United States shall be entitled to travel expenses when traveling on the business of the Board.

(Pub. L. 94-168, §9, Dec. 23, 1975, 89 Stat. 1011.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§205i. Personnel

(a) Executive Director; appointment; tenure; duties

The Board shall appoint a qualified individual to serve as the Executive Director of the Board at the pleasure of the Board. The Executive Director, subject to the direction of the Board, shall be responsible to the Board and shall carry out the metric conversion program, pursuant to the provisions of this subchapter and the policies established by the Board.

(b) Executive Director; salary

The Executive Director of the Board shall serve full time and be subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5. The annual salary of the Executive Director

shall not exceed level III of the Executive Schedule under section 5314 of such title.

(c) Staff personnel; appointment and compensation

The Board may appoint and fix the compensation of such staff personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(d) Experts and consultants; employment and compensation; annual review of contracts

The Board may (1) employ experts and consultants or organizations thereof, as authorized by section 3109 of title 5; (2) compensate individuals so employed at rates not in excess of the rate currently being paid grade 18 of the General Schedule under section 5332 of such title, including traveltime; and (3) may allow such individuals, 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 such title 5 for persons in the Government service employed intermittently: *Provided, however,* That contracts for such temporary employment may be renewed annually.

(Pub. L. 94-168, §10, Dec. 23, 1975, 89 Stat. 1012.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§205j. Financial and administrative services; source and reimbursement

Financial and administrative services, including those related to budgeting, accounting, financial reporting, personnel, and procurement, and such other staff services as may be needed by the Board, may be obtained by the Board from the Secretary of Commerce or other appropriate sources in the Federal Government. Payment for such services shall be made by the Board, in advance or by reimbursement, from funds of the Board in such amounts as may be agreed upon by the Chairman of the Board and by the source of the services being rendered.

(Pub. L. 94-168, §11, Dec. 23, 1975, 89 Stat. 1012.)

§205j-1. Repealed. Pub. L. 104-66, title III, §3001(e), Dec. 21, 1995, 109 Stat. 734

Section, Pub. L. 94-168, §12, as added Pub. L. 100-418, title V, §5164(c), Aug. 23, 1988, 102 Stat. 1452, related to agency guidelines to carry out metric conversion policy.

A prior section 12 of Pub. L. 94-168 was renumbered section 13 and is classified to section 205k of this title.

§205k. Authorization of appropriations; availability

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter. Appropriations to carry out the provisions of this subchapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(Pub. L. 94-168, §13, formerly §12, Dec. 23, 1975, 89 Stat. 1012, renumbered §13, Pub. L. 100-418, title V, §5164(c), Aug. 23, 1988, 102 Stat. 1452.)

§205/. Implementation in acquisition of construction services and materials for Federal facilities

(a) In general

Construction services and materials for Federal facilities shall be procured in accordance with the policies and procedures set forth in the provisions of title 10, referred to in section 3016 of such title as "chapter 137 legacy provisions", section 3453 of such title, division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, and section 205b(2) of this title. Determination of a design method shall be based upon preliminary market research as required under section 3453(c) of title 10 and section 3307(d) of title 41. If the requirements of this subchapter conflict with the provisions of section 3453 of title 10 or section 3307(b) to (d) of title 41, then the provisions of such sections ¹ 3453 or 3307(b) to (d) shall take precedence.

(b) Concrete masonry units

In carrying out the policy set forth in section 205b of this title (with particular emphasis on the policy set forth in paragraph (2) of that section) a Federal agency may require that specifications for the acquisition of structures or systems of concrete masonry be expressed under the metric system of measurement, but may not incorporate specifications, that can only be satisfied by hard-metric versions of concrete masonry units, in a solicitation for design or construction of a Federal facility within the United States or its territories, or a portion of said Federal facility, unless the head of the agency determines in writing that—

(1) hard-metric specifications are necessary in a contract for the repair or replacement of parts of Federal facilities in existence or under construction upon the effective date of the Savings in Construction Act of 1996; or

(2) the following 2 criteria are met:

(A) the application requires hard-metric concrete masonry units to coordinate dimensionally into 100 millimeter building modules; and

(B) the total installed price of hard-metric concrete masonry units is estimated to be equal to or less than the total installed price of using non-hard-metric concrete masonry units. Total installed price estimates shall be based, to the extent available, on cost or pricing data or price analysis, using actual hard-metric and non-hard-metric offers received for comparable existing projects. The head of the agency shall include in the writing required in this subsection an explanation of the factors used to develop the price estimates.

(c) Recessed lighting fixtures

In carrying out the policy set forth in section 205b of this title (with particular emphasis on the policy set forth in paragraph (2) of that section) a Federal agency may require that specifications for the acquisition of structures or systems of recessed lighting fixtures be expressed under the metric system of measurement, but may not incorporate specifications, that can only be satisfied by hard-metric versions of recessed lighting fixtures, in a solicitation for design or construction of a Federal facility within the United States or its territories unless the head of the agency determines in writing that—

(1) the predominant voluntary industry consensus standards include the use of hard-metric for the items specified; or

(2) hard-metric specifications are necessary in a contract for the repair or replacement of parts of Federal facilities in existence or under construction upon the effective date of the Savings in Construction Act of 1996; or

(3) the following 2 criteria are met:

(A) the application requires hard-metric recessed lighting fixtures to coordinate dimensionally into 100 millimeter building modules; and

(B) the total installed price of hard-metric recessed lighting fixtures is estimated to be equal to or less than the total installed price of using non-hard-metric recessed lighting fixtures. Total installed price estimates shall be based, to the extent available, on cost or pricing data or price analysis, using actual hard-metric and non-hard-metric offers received for comparable existing

projects. The head of the agency shall include in the writing required in this subsection an explanation of the factors used to develop the price estimates.

(d) Limitation

The provisions of subsections (b) and (c) of this section shall not apply to Federal contracts to acquire construction products for the construction of facilities outside of the United States and its territories.

(e) Repealed. Pub. L. 108–423, §6, Nov. 30, 2004, 118 Stat. 2402

(f) Agency ombudsman

(1) The head of each executive agency that awards construction contracts within the United States and its territories shall designate a senior agency official to serve as a construction metrication ombudsman who shall be responsible for reviewing and responding to complaints from prospective bidders, subcontractors, suppliers, or their designated representatives related to—

(A) guidance or regulations issued by the agency on the use of the metric system of measurement in contracts for the construction of Federal buildings; and

(B) the use of the metric system of measurement for services and materials required for incorporation in individual projects to construct Federal buildings.

The construction metrication ombudsman shall be independent of the contracting officer for construction contracts.

(2) The ombudsman shall be responsible for ensuring that the agency is not implementing the metric system of measurement in a manner that is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms in violation of the policy stated in section 205b(2) of this title, or is otherwise inconsistent with guidance issued by the Secretary of Commerce in consultation with the Interagency Council on Metric Policy while ensuring that the goals of this subchapter are observed.

(3) The ombudsman shall respond to each complaint in writing within 60 days and make a recommendation to the head of the executive agency for an appropriate resolution thereto. In such a recommendation, the ombudsman shall consider—

(A) whether the agency is adequately applying the policies and procedures in this section;

(B) whether the availability of hard-metric products and services from United States firms is sufficient to ensure full and open competition; and

(C) the total installed price to the Federal Government.

(4) After the head of the agency has rendered a decision regarding a recommendation of the ombudsman, the ombudsman shall be responsible for communicating the decision to all appropriate policy, design, planning, procurement, and notifying personnel in the agency. The ombudsman shall conduct appropriate monitoring as required to ensure the decision is implemented, and may submit further recommendations, as needed. The head of the agency's decision on the ombudsman's recommendations, and any supporting documentation, shall be provided to affected parties and made available to the public in a timely manner.

(5) Nothing in this section shall be construed to supersede the bid protest process established under subchapter V of chapter 35 of title 31.

(Pub. L. 94–168, §14, as added and amended Pub. L. 104–289, §§4(a), 5, Oct. 11, 1996, 110 Stat. 3412, 3414; Pub. L. 108–423, §6, Nov. 30, 2004, 118 Stat. 2402; Pub. L. 117–81, div. A, title XVII, §1702(e)(1), Dec. 27, 2021, 135 Stat. 2156.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of the Savings in Construction Act of 1996, referred to in subsecs. (b)(1) and (c)(2), is 90 days after Oct. 11, 1996. See Effective Date of 1996 Amendment; Savings Provision note set out under

section 205c of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 117–81 substituted "set forth in the provisions of title 10, referred to in section 3016 of such title as 'chapter 137 legacy provisions', section 3453 of such title, division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41," for "set forth in chapter 137 of title 10, section 2377 of title 10, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.),"; "under section 3453(c) of title 10 and section 3307(d) of title 41." for "under section 2377(c) of title 10 and section 314B(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 264b(c))."; and "section 3453 of title 10 or section 3307(b) to (d) of title 41, then the provisions of such sections 3453 or 3307(b) to (d) shall take" for "section 2377 of title 10 or section 314B of the Federal Property and Administrative Services Act of 1949, then the provisions of 2377 or 314B shall take".

2004—Subsec. (e). Pub. L. 108–423 struck out heading and text of subsec. (e). Text read as follows: "The provisions contained in subsections (b) and (c) of this section shall expire 10 years from the effective date of the Savings in Construction Act of 1996."

1996—Pub. L. 104–289, §5, added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE; SAVINGS PROVISION

Section effective 90 days after Oct. 11, 1996, and inapplicable to contracts awarded and solicitations issued on or before that date, unless head of Federal agency makes written determination that it would be in public interest to apply one or more provisions of Pub. L. 104–289 to these existing contracts or solicitations, see section 6(b) of Pub. L. 104–289, set out as an Effective Date of 1996 Amendment; Savings Provision note under section 205c of this title.

¹ So in original. Probably should be "section".

SUBCHAPTER III—STANDARD GAUGE FOR IRON AND STEEL

§206. Standard gauge for sheet and plate iron and steel

For the purpose of securing uniformity the following is established as the only standard gauge for sheet and plate iron and steel in the United States of America, namely:

Number of gauge	Approximate thickness in fractions of an inch	Approximate thickness in decimal parts of an inch	Approximate thickness in millimeters	Weight per square foot in ounces	Weight per square foot in pounds	Weight per square foot in kilograms	Weight per square meter in kilograms	Weight per square meter in pounds
0000000	1/2	.5	12.7	320	20.00	9.072	97.65	215.28
000000	15/32	.46875	11.90625	300	18.75	8.505	91.55	201.82
00000	7/16	.4375	11.1125	280	17.50	7.983	85.44	188.37
0000	13/32	.40625	10.31875	260	16.25	7.371	79.33	174.91
000	3/8	.375	9.525	240	15	6.804	73.24	161.46
00	11/32	.34375	8.73125	220	13.75	6.237	67.13	148.00
0	5/16	.3125	7.9375	200	12.50	5.67	61.03	134.55
1	9/32	.28125	7.14375	180	11.25	5.103	54.93	121.09
2	17/64	.265625	6.746875	170	10.625	4.819	51.88	114.37
3	1/4	.25	6.35	160	10	4.536	48.82	107.64

4	15/64	.234375	5.953125	150	9.375	4.252	45.77	100.91
5	7/32	.21875	5.55625	140	8.75	3.969	42.72	94.18
6	13/64	.203125	5.159375	130	8.125	3.685	39.67	87.45
7	3/16	.1875	4.7625	120	7.5	3.402	36.62	80.72
8	11/64	.171875	4.365625	110	6.875	3.118	33.57	74.00
9	5/32	.15625	3.96875	100	6.25	2.835	30.52	67.27
10	9/64	.140625	3.571875	90	5.625	2.552	27.46	60.55
11	1/8	.125	3.175	80	5	2.268	24.41	53.82
12	7/64	.109375	2.778125	70	4.375	1.984	21.36	47.09
13	3/32	.09375	2.38125	60	3.75	1.701	18.31	40.36
14	5/64	.078125	1.984375	50	3.125	1.417	15.26	33.64
15	9/128	.0703125	1.7859375	45	2.8125	1.276	13.73	30.27
16	1/16	.0625	1.5875	40	2.5	1.134	12.21	26.91
17	9/160	.05625	1.42875	36	2.25	1.021	10.99	24.22
18	1/20	.05	1.27	32	2	.9072	9.765	21.53
19	7/160	.04375	1.11125	28	1.75	.7938	8.544	18.84
20	3/80	.0375	.9525	24	1.50	.6804	7.324	16.15
21	11/320	.034375	.873125	22	1.375	.6237	6.713	14.80
22	1/32	.03125	.793750	20	1.25	.567	6.103	13.46
23	9/320	.028125	.714375	18	1.125	.5103	5.493	12.11
24	1/40	.025	.635	16	1	.4536	4.882	10.76
25	7/320	.021875	.555625	14	.875	.3969	4.272	9.42
26	3/160	.01875	.47625	12	.75	.3402	3.662	8.07
27	11/640	.0171875	.4365625	11	.6875	.3119	3.357	7.40
28	1/64	.015625	.396875	10	.625	.2835	3.052	6.73
29	9/640	.0140625	.3571875	9	.5625	.2551	2.746	6.05
30	1/80	.0125	.3175	8	.5	.2268	2.441	5.38
31	7/640	.0109375	.2778125	7	.4375	.1984	2.136	4.71
32	13/1280	.01015625	.25796875	6½	.40625	.1843	1.983	4.37
33	3/320	.009375	.238125	6	.375	.1701	1.831	4.04
34	11/1280	.00859375	.21828125	5½	.34375	.1559	1.678	3.70
35	5/640	.0078125	.1984375	5	.3125	.1417	1.526	3.36
36	9/1280	.00703125	.17859375	4½	.28125	.1276	1.373	3.03
37	17/2560	.006640625	.168671875	4¼	.265625	.1205	1.297	2.87
38	1/160	.00625	.15875	4	.25	.1134	1.221	2.69

The same and no other shall be used in determining duties and taxes levied by the United States of America on sheet and plate iron and steel. But this subchapter shall not be construed to increase duties upon any articles which may be imported.

(Mar. 3, 1893, ch. 221, §1, 27 Stat. 746.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this act", meaning act Mar. 3, 1893, ch. 221, 27 Stat. 746, which is classified to sections 206 to 208 of this title.

§207. Preparation of standards by Secretary of Commerce

The Secretary of Commerce is authorized and required to prepare suitable standards in accordance with section 206 of this title.

(Mar. 3, 1893, ch. 221, §2, 27 Stat. 746; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor, and renamed Department of Commerce and Labor as Department of Commerce.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

§208. Variations

In the practical use and application of the standard gauge established ¹ in section 206 of this title a variation of 2½ percent, either way may be allowed.

(Mar. 3, 1893, ch. 221, §3, 27 Stat. 746.)

¹ *So in original. Probably should be "established".*

SUBCHAPTER IV—SCREW THREADS

§§208a to 212. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 644, 646

Sections, acts July 18, 1918, ch. 156, §§1–5, 40 Stat. 912, 913; Mar. 3, 1919, ch. 96, 40 Stat. 1291; Apr. 16, 1926, ch. 148, 44 Stat. 297, created Commission for the Standardization of Screw Threads and provided for composition of Commission, its duties, and pay.

SUBCHAPTER V—STANDARDS OF ELECTRICITY

§§221, 222. Repealed. July 21, 1950, ch. 484, §13, 64 Stat. 370

Sections, act July 12, 1894, ch. 131, §§1, 2, 28 Stat. 101, 102, related to units of electrical measure.

§§223, 224. Repealed. Pub. L. 110–69, title III, §3013(c)(2), Aug. 9, 2007, 121 Stat. 598

Section 223, acts July 21, 1950, ch. 484, §§1–11, 64 Stat. 369; Pub. L. 88–165, Nov. 4, 1963, 77 Stat. 299, related to units of electrical measure.

Section 224, act July 21, 1950, ch. 484, §12, 64 Stat. 370, related to establishment of values of primary electric and photometric units in absolute measure and legal values for those units.

SUBCHAPTER VI—STANDARD BARRELS

§231. Standard barrel for apples; steel barrels

The standard barrel for apples shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of head, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches outside measurement, representing as nearly as possible seven thousand and fifty-six cubic inches: *Provided*, That steel barrels containing the interior dimensions provided for in this section shall be construed as a compliance therewith.

(Aug. 3, 1912, ch. 273, §1, 37 Stat. 250.)

§232. Barrels below standard; marking

All barrels packed with apples shall be deemed to be below standard if the barrel bears any statement, design, or device indicating that the barrel is a standard barrel of apples, as defined in section 231 of this title, and the capacity of the barrel is less than the capacity prescribed by said section, unless the barrel shall be plainly marked on end and side with words or figures showing the fractional relation which the actual capacity of the barrel bears to the capacity prescribed by said section. The marking required by this section shall be in block letters of size not less than seventy-two point (one-inch) gothic.

(Aug. 3, 1912, ch. 273, §4, 37 Stat. 251.)

§233. Penalty for violations

Any person, firm, or corporation, or association who shall knowingly pack or cause to be packed apples in barrels, or who shall knowingly sell or offer for sale such barrels in violation of the provisions of this Act shall be liable to a penalty of \$1 and costs for each such barrel so sold or offered for sale, to be recovered at the suit of the United States in any court of the United States having jurisdiction.

(Aug. 3, 1912, ch. 273, §6, 37 Stat. 251.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is act Aug. 3, 1912, ch. 273, §§1–6, 37 Stat. 250, 251, which is classified to sections 231 to 233 of this title and to sections 20 to 23 of Title 21, Food and Drugs.

CODIFICATION

This section is also set out as section 23 of Title 21, Food and Drugs.

§234. Standard barrel for fruits or other dry commodity

The standard barrel for fruits, vegetables, and other dry commodities other than cranberries shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch: *Provided*, That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured

without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch.

(Mar. 4, 1915, ch. 158, §1, 38 Stat. 1186.)

§235. Sale or shipment of barrel of less capacity than standard; punishment

It shall be unlawful to sell, offer, or expose for sale in any State, Territory, or the District of Columbia, or to ship from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia or to a foreign country, a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in section 234 of this title, known as the third, half, and three-quarters barrel, and any person guilty of a willful violation of any of the provisions of sections 234 to 236 of this title shall be deemed guilty of a misdemeanor and be liable to a fine not to exceed \$500, or imprisonment not to exceed six months, in the court of the United States having jurisdiction: *Provided, however,* That no barrel shall be deemed below standard within the meaning of said sections when shipped to any foreign country and constructed according to the specifications or directions of the foreign purchaser if not constructed in conflict with the laws of the foreign country to which the same is intended to be shipped.

(Mar. 4, 1915, ch. 158, §2, 38 Stat. 1186.)

§236. Variations from standard permitted; prosecutions; law not applicable to certain barrels

Reasonable variations shall be permitted and tolerance shall be established by rules and regulations made by the Director of the National Institute of Standards and Technology and approved by the Secretary of Commerce. Prosecutions for offenses under this section or sections 234 or 235 of this title may be begun upon complaint of local sealers of weights and measures or other officers of the several States and Territories appointed to enforce the laws of the said States or Territories, respectively, relating to weights and measures: *Provided, however,* That nothing in this section or sections 234 and 235 of this title shall apply to barrels used in packing or shipping commodities sold exclusively by weight or numerical count.

(Mar. 4, 1915, ch. 158, §3, 38 Stat. 1187; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§237. Standard barrels for lime

There is established a large and a small barrel of lime, the large barrel to consist of two hundred and eighty pounds and the small barrel to consist of one hundred and eighty pounds, net weight. (Aug. 23, 1916, ch. 396, §1, 39 Stat. 530.)

§238. Penalty for selling in barrels not marked

It shall be unlawful for any person to sell or offer for sale lime imported in barrels from a foreign country, or to sell or offer for sale lime in barrels for shipment from any State or Territory or the District of Columbia, to any other State or Territory or the District of Columbia, unless there shall be stenciled or otherwise clearly marked on one or both heads of the small barrel the figures "180 lbs. net" and of the large barrel the figures "280 lbs. net" before the importation or shipment, and on either barrel in addition the name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported. (Aug. 23, 1916, ch. 396, §2, 39 Stat. 530.)

§239. Sale in containers of less capacity than barrel

When lime is sold in interstate or foreign commerce in containers of less capacity than the standard small barrel, it shall be sold in fractional parts of said standard small barrel, and the net weight of lime contained in such container shall by stencil or otherwise be clearly marked thereon, together with the name of the manufacturer thereof, and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported. (Aug. 23, 1916, ch. 396, §3, 39 Stat. 530.)

§240. Rules and regulations

Rules and regulations for the enforcement of sections 237 to 242 of this title, not inconsistent with the provisions of said sections, shall be made by the Director of the National Institute of Standards and Technology and approved by the Secretary of Commerce, and such rules and regulations shall include reasonable variations or tolerances which may be allowed. (Aug. 23, 1916, ch. 396, §4, 39 Stat. 531; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§241. Penalty for selling lime in unmarked barrels and containers

It shall be unlawful to pack, sell, or offer for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any barrels or other containers of lime which are not marked as provided in sections 238 and 239 of this title, or to sell, charge for, or purport to deliver from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, as a large or small barrel or a fractional part of said small barrel of lime, any less weight of lime than is established by the provisions of sections 237 to 242 of this title and any person guilty of a violation of the provisions of said sections shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding \$100.

(Aug. 23, 1916, ch. 396, §5, 39 Stat. 531.)

§242. Duty of United States attorney to enforce law

It shall be the duty of each United States attorney, to whom satisfactory evidence of any violation of sections 237 to 242 of this title is presented, to cause appropriate proceedings to be commenced and prosecuted in the United States court having jurisdiction of such offense.

(Aug. 23, 1916, ch. 396, §6, 39 Stat. 531; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney". See section 541 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER VII—STANDARD BASKETS AND CONTAINERS

§§251 to 256. Repealed. Pub. L. 90–628, §1(a), Oct. 22, 1968, 82 Stat. 1320

Section 251, acts Aug. 31, 1916, ch. 426, §1, 39 Stat. 673; June 11, 1934, ch. 447, §1, 48 Stat. 930, set standards for Climax baskets for grapes and other fruits and vegetables and for mushrooms.

Section 252, act Aug. 31, 1916, ch. 426, §2, 39 Stat. 673, set standards for standard basket or container for small fruits and vegetables.

Section 253, acts Aug. 31, 1916, ch. 426, §3, 39 Stat. 674; June 11, 1934, c. 447, §2, 48 Stat. 930, set penalties for failure to conform to standards.

Section 254, act Aug. 31, 1916, ch. 426, §4, 39 Stat. 674, provided for examinations and tests by Department of Agriculture and for promulgation of rules and regulations covering allowable tolerances and variations.

Section 255, acts Aug. 31, 1916, ch. 426, §5, 39 Stat. 674; June 25, 1948, ch. 646, §1, 62 Stat. 909, made United States attorney responsible for commencing actions to enforce penalties.

Section 256, act Aug. 31, 1916, ch. 426, §6, 39 Stat. 674, covered guaranty given by manufacturers or sellers of baskets as to correctness of such containers.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 90–628, §3, Oct. 22, 1968, 82 Stat. 1320, provided that: "This Act [repealing sections 251 to 257i of this title and amending section 1459 of this title] shall become effective 60 days after enactment [Oct. 22, 1968]."

SUBCHAPTER VIII—STANDARD HAMPERS, ROUND STAVE BASKETS, AND SPLINT BASKETS FOR FRUITS AND VEGETABLES

§§257 to 257i. Repealed. Pub. L. 90–628, §1(b), Oct. 22, 1968, 82 Stat. 1320

Section 257, acts May 21, 1928, ch. 664, §1, 45 Stat. 685; June 28, 1954, ch. 406, §1, 68 Stat. 301; Aug. 30, 1964, Pub. L. 88–516, §1, 78 Stat. 697, set dimensions for standard hampers and round stave baskets.

Section 257a, acts May 21, 1928, ch. 664, §2, 45 Stat. 685; Aug. 30, 1964, Pub. L. 88–516, §2, 78 Stat. 697, set dimensions for standard splint baskets.

Section 257b, act May 21, 1928, ch. 664, §3, 45 Stat. 686, provided for promulgation of regulations allowing reasonable variations in hampers and baskets.

Section 257c, act May 21, 1928, ch. 664, §4, 45 Stat. 686, required approval by Secretary of Agriculture of manufacturer's dimension specifications for hampers and baskets.

Section 257d, acts May 21, 1928, ch. 664, §5, 45 Stat. 686; Aug. 30, 1964, Pub. L. 88–516, §3, 78 Stat. 697, set out penalties for violations and covered guaranty given by manufacturers and sellers of hampers and baskets as to their correctness.

Section 257e, act May 21, 1928, ch. 664, §6, 45 Stat. 686, provided for seizure of illegal hampers and baskets, and procedure covering their condemnation.

Section 257f, act May 21, 1928, ch. 664, §7, 45 Stat. 687, allowed manufacture of hampers and baskets for foreign sale in conformity with foreign specifications.

Section 257g, acts May 21, 1928, ch. 664, §8, 45 Stat. 687; June 25, 1948, ch. 646, §1, 62 Stat. 909, placed upon the United States Attorney the duty to prosecute for violations of sections 257 to 257i of this title.

Section 257h, act May 21, 1928, ch. 664, §9, 45 Stat. 687, provided for promulgation of regulations covering examinations and tests by Secretary of Agriculture.

Section 257i, act May 21, 1968, ch. 664, §10, 45 Stat. 687, authorized Secretary of Agriculture to cooperate with other agencies in carrying out sections 257 to 257i of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 60 days after Oct. 22, 1968, see section 3 of Pub. L. 90–628, set out as a note under section 251 of this title.

SUBCHAPTER IX—STANDARD TIME

§260. Congressional declaration of policy; adoption and observance of uniform standard of time; authority of Secretary of Transportation

It is the policy of the United States to promote the adoption and observance of uniform time within the standard time zones prescribed by sections 261 to 264 of this title, as modified by section 265 of this title. To this end the Secretary of Transportation is authorized and directed to foster and promote widespread and uniform adoption and observance of the same standard of time within and throughout each such standard time zone.

(Pub. L. 89–387, §2, Apr. 13, 1966, 80 Stat. 107; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439.)

EDITORIAL NOTES

AMENDMENTS

1983—Pub. L. 97–449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 89–387, §6, Apr. 13, 1966, 80 Stat. 108, provided that: "This Act [enacting this section and sections 260a, 266, and 267 of this title and amending sections 261 to 263 of this title] shall take effect on April 1, 1967; except that if any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any political subdivision thereof, observes daylight saving time in the year 1966, such time shall advance the standard time otherwise applicable in such place by one hour and shall commence at 2 o'clock antemeridian on the last Sunday in April of the year 1966 and shall end at 2 o'clock antemeridian on the last Sunday in October of the year 1966."

SHORT TITLE

Pub. L. 89–387, §1, Apr. 13, 1966, 80 Stat. 107, provided: "That this Act [enacting this section and sections 260a, 266, and 267 of this title and amending sections 261 to 263 of this title] may be cited as the 'Uniform Time Act of 1966'."

§260a. Advancement of time or changeover dates

(a) Duration of period; State exemption

During the period commencing at 2 o'clock antemeridian on the second Sunday of March of each year and ending at 2 o'clock antemeridian on the first Sunday of November of each year, the standard time of each zone established by sections 261 to 264 of this title, as modified by section 265 of this title, shall be advanced one hour and such time as so advanced shall for the purposes of such sections 261 to 264, as so modified, be the standard time of such zone during such period; however, (1) any State that lies entirely within one time zone may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if that law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable during that period, and (2) any State with parts thereof in more than one time zone may by law exempt either the entire State as provided in (1) or may exempt the entire area of the State lying within any time zone.

(b) State laws superseded

It is hereby declared that it is the express intent of Congress by this section to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or changeover dates different from those specified in this section.

(c) Violations; enforcement

For any violation of the provisions of this section the Secretary of Transportation or his duly authorized agent may apply to the district court of the United States for the district in which such violation occurs for the enforcement of this section; and such court shall have jurisdiction to enforce obedience thereto by writ of injunction or by other process, mandatory or otherwise, restraining against further violations of this section and enjoining obedience thereto.

(Pub. L. 89–387, §3, Apr. 13, 1966, 80 Stat. 107; Pub. L. 92–267, Mar. 30, 1972, 86 Stat. 116; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439; Pub. L. 99–359, §2(b), July 8, 1986, 100 Stat. 764; Pub. L. 109–58, title I, §110(a), Aug. 8, 2005, 119 Stat. 615.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 substituted "second Sunday of March" for "first Sunday of April" and "first Sunday of November" for "last Sunday of October".

1986—Subsec. (a). Pub. L. 99–359 substituted "first Sunday of April" for "last Sunday of April".

1983—Subsec. (c). Pub. L. 97–449 substituted "Secretary of Transportation or his" for "Interstate Commerce Commission or its".

1972—Subsec. (a). Pub. L. 92–267 authorized any State with parts thereof lying in more than one time zone

to exempt by law that part of such State lying within any time zone from provisions of this subsection providing for advancement of time.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title I, §110(b), Aug. 8, 2005, 119 Stat. 615, provided that: "Subsection (a) [amending this section] shall take effect 1 year after the date of enactment of this Act [Aug. 8, 2005] or March 1, 2007, whichever is later."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–359, §2(e), July 8, 1986, 100 Stat. 765, provided that: "This section [amending this section and enacting provisions set out as notes below] shall take effect 60 days after the date of enactment of this Act [July 8, 1986], except that if such effective date occurs in any calendar year after March 1, this section shall take effect on the first day of the following calendar year."

STUDY AND REPORT ON ENERGY CONSUMPTION; REVERSION

Pub. L. 109–58, title I, §110(c), (d), Aug. 8, 2005, 119 Stat. 615, provided that:

"(c) **REPORT TO CONGRESS.**—Not later than 9 months after the effective date stated in subsection (b) [set out above], the Secretary [of Energy] shall report to Congress on the impact of this section [amending this section] on energy consumption in the United States.

"(d) **RIGHT TO REVERT.**—Congress retains the right to revert the Daylight Saving Time back to the 2005 time schedules once the Department [of Energy] study is complete."

CONGRESSIONAL FINDINGS; EXPANSION OF DAYLIGHT SAVING TIME

Pub. L. 99–359, §2(a), July 8, 1986, 100 Stat. 764, provided that: "The Congress finds—

"(1) that various studies of governmental and nongovernmental agencies indicate that daylight saving time over an expanded period would produce a significant energy savings in electrical power consumption;

"(2) that daylight saving time may yield energy savings in other areas besides electrical power consumption;

"(3) that daylight saving time over an expanded period could serve as an incentive for further energy conservation by individuals, companies, and the various governmental entities at all levels of government, and that such energy conservation efforts could lead to greatly expanded energy savings; and

"(4) that the use of daylight saving time over an expanded period could have other beneficial effects on the public interest, including the reduction of crime, improved traffic safety, more daylight outdoor playtime for the children and youth of our Nation, greater utilization of parks and recreation areas, expanded economic opportunity through extension of daylight hours to peak shopping hours and through extension of domestic office hours to periods of greater overlap with the European Economic Community."

EFFECTIVENESS OF STATE EXEMPTION IN EFFECT ON JULY 8, 1986

Pub. L. 99–359, §2(c), July 8, 1986, 100 Stat. 764, provided that: "Any law in effect on the date of the enactment of this Act [July 8, 1986]—

"(1) adopted pursuant to section 3(a)(2) of the Uniform Time Act of 1966 [15 U.S.C. 260a(a)(2)] by a State with parts thereof in more than one time zone, or

"(2) adopted pursuant to section 3(a)(1) of such Act by a State that lies entirely within one time zone, shall be held and considered to remain in effect as the exercise by that State of the exemption permitted by such Act [see 15 U.S.C. 260a(a)] unless that State, by law, provides that such exemption shall not apply."

ADJUSTMENT BY GENERAL RULES OR INTERIM ACTION WITH RESPECT TO HOURS OF OPERATION OF DAYTIME STANDARD AMPLITUDE MODULATION BROADCAST STATIONS

Pub. L. 99–359, §2(d), July 8, 1986, 100 Stat. 764, provided that:

"(1) Notwithstanding any other law or any regulation issued under any such law, the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent with the public interest, including the public's interest in receiving interference-free service.

"(2) Such general rules, or interim action, may include variances with respect to operating power and other

technical operating characteristics.

"(3) Subsequent to the adoption of such general rules, they may be varied with respect to particular stations and areas because of the exigencies in each case."

EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION

Pub. L. 93-182, Dec. 15, 1973, 87 Stat. 707, as amended by Pub. L. 93-434, Oct. 5, 1974, 88 Stat. 1209, enacted the Emergency Daylight Saving Time Energy Conservation Act of 1973, which extended daylight saving time. The act was effective at 2 a.m. on the fourth Sunday which occurred after Dec. 15, 1973 and terminated at 2 a.m. on the last Sunday of April 1975.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 11751. EXEMPTIONS FROM DAYLIGHT SAVING TIME AND REALIGNMENTS OF TIME ZONE LIMITS

Ex. Ord. No. 11751, Dec. 15, 1973, 38 F.R. 34725, provided:

By virtue of the authority vested in me by section 3(b) of the Emergency Daylight Savings Time Energy Conservation Act of 1973 (Public Law 93-182) (hereinafter "the Act") [formerly set out above], section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Transportation (hereinafter "the Secretary") is hereby designated and empowered to exercise the authority vested in me by section 3(b) of the Act [formerly set out above] to grant an exemption from section 3(a) of the Act (which establishes daylight saving time as standard time), or a realignment of a time zone limit, pursuant to a proclamation of a Governor of a State finding that the exemption or realignment is necessary to avoid undue hardship or to conserve fuel in the State or a part thereof.

SEC. 2. In deciding to grant or deny an exemption or realignment, the Secretary shall consider, among other things, the policy of the United States, as expressed in sections 2 and 4 of the Uniform Time Act of 1966 (80 Stat. 107, 108; 15 U.S.C. 260, 261), to promote the adoption and observance of uniform time within the standard time zones of the United States and the convenience of commerce, as well as possible energy savings, undue hardship to large segments of the population, and the possible impact on the success of and cooperation with the national energy conservation program.

SEC. 3. In carrying out his responsibilities under this order, the Secretary shall, as he deems necessary, consult with the Department of Health, Education, and Welfare, the Federal Energy Office (or any agency which hereafter may succeed to its functions), and any other interested agency and he may call upon those agencies for information and advice. Each interested department or agency shall assist the Secretary, as necessary, to carry out the provisions of this order.

RICHARD NIXON.

§261. Zones for standard time; interstate or foreign commerce

(a) In general

For the purpose of establishing the standard time of the United States, the territory of the United States shall be divided into nine zones in the manner provided in this section. Except as provided in section 260a(a) of this title, the standard time of the first zone shall be Coordinated Universal Time retarded by 4 hours; that of the second zone retarded by 5 hours; that of the third zone retarded by 6 hours; that of the fourth zone retarded by 7 hours; that of the fifth zone retarded ¹8 hours; that of the sixth zone retarded by 9 hours; that of the seventh zone retarded by 10 hours; that of the eighth zone retarded by 11 hours; and that of the ninth zone shall be Coordinated Universal Time advanced by 10 hours. The limits of each zone shall be defined by an order of the Secretary of Transportation, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce, and any such order may be modified from time to time. As used in sections 261 to 264 of this title, the term "interstate or foreign commerce" means commerce between a State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof.

(b) Coordinated Universal Time defined

In this section, the term "Coordinated Universal Time" means the time scale maintained through the General Conference of Weights and Measures and interpreted or modified for the United States by the Secretary of Commerce in coordination with the Secretary of the Navy.

(Mar. 19, 1918, ch. 24, §1, 40 Stat. 450; Pub. L. 89-387, §4(a), Apr. 13, 1966, 80 Stat. 108; Pub. L. 97-449, §2(c), Jan. 12, 1983, 96 Stat. 2439; Pub. L. 106-564, §1(a), Dec. 23, 2000, 114 Stat. 2811; Pub. L. 110-69, title III, §3013(c)(3), Aug. 9, 2007, 121 Stat. 598.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110-69 designated existing provisions as subsec. (a), inserted heading, substituted second sentence for former second sentence which read as follows: "Except as provided in section 260a(a) of this title, the standard time of the first zone shall be based on the mean solar time of the sixtieth degree of longitude west from Greenwich; that of the second zone on the seventy-fifth degree; that of the third zone on the ninetieth degree; that of the fourth zone on the one hundred and fifth degree; that of the fifth zone on the one hundred and twentieth degree; that of the sixth zone on the one hundred and thirty-fifth degree; that of the seventh zone on the one hundred and fiftieth degree; that of the eighth zone on the one hundred and sixty-fifth degree; and that of the ninth zone on the one hundred and fiftieth meridian of longitude east from Greenwich..", and added subsec. (b).

2000—Pub. L. 106-564, in first sentence, substituted "nine zones" for "eight zones" and, in second sentence, substituted "; that of the eighth" for "; and that of the eighth" and inserted before period at end "; and that of the ninth zone on the one hundred and fiftieth meridian of longitude east from Greenwich."

1983—Pub. L. 97-449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

1966—Pub. L. 89-387 increased the number of time zones from five for the territory of continental United States to eight for the territory of the United States, inserted the "exception phrase", substituted "solar" for "astronomical" time, established the first zone on basis of the 60th degree of longitude west from Greenwich, redesignated as the second through the fifth zones based on the 75th, 90th, 105th, and 120th degrees former zones one through four based on such degrees, established the sixth zone based on the 135th degree, redesignated as the seventh zone based on the 150th degree former fifth zone based on such degree, and established the eighth zone based on the 165th degree, substituted "interstate or foreign commerce" for "commerce between the several States and and with foreign nations" and defined "interstate or foreign commerce".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Act Mar. 19, 1918, ch. 24, 40 Stat. 450, as amended, which is classified to sections 261 to 264 of this title, is popularly known as the "Calder Act".

REPEALS

Section 5 of act Mar. 19, 1918, repealed all conflicting acts and parts of acts.

DISTRICT OF COLUMBIA

Act Mar. 31, 1949, ch. 43, 63 Stat. 29, authorized the Board of Commissioners [now the Council of the District of Columbia] to establish daylight-saving time in the District of Columbia.

RETURN TO STANDARD TIME

Act Sept. 25, 1945, ch. 388, 59 Stat. 537, provided, that, notwithstanding the provisions of act Jan. 20, 1942, ch. 7, 56 Stat. 9, which provided for war time, the standard time for each zone as provided for in sections 261 to 264 of this title should again become effective as of Sept. 30, 1945, at 2:00 A.M.

¹ *So in original. Probably should be followed by "by".*

§262. Duty to observe standard time of zones

Within the respective zones created under the authority of sections 261 to 264 of this title the standard time of the zone shall insofar as practicable (as determined by the Secretary of Transportation) govern the movement of all common carriers engaged in interstate or foreign commerce. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall insofar as practicable (as determined by the Secretary of Transportation) be the United States standard time of the zone within which the act is to be performed.

(Mar. 19, 1918, ch. 24, §2, 40 Stat. 451; Pub. L. 89-387, §4(b), Apr. 13, 1966, 80 Stat. 108; Pub. L. 97-449, §2(c), Jan. 12, 1983, 96 Stat. 2439.)

EDITORIAL NOTES

AMENDMENTS

1983—Pub. L. 97-449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

1966—Pub. L. 89-387 inserted "insofar as practicable (as determined by the Interstate Commerce Commission)" in two places and substituted "engaged in interstate or foreign commerce" for "engaged in commerce between the several States or between a State and any one of the Territories of the United States, or between a State or the Territory of Alaska and any one of the insular possessions of the United States or any foreign country".

§263. Designation of zone standard times

The standard time of the first zone shall be known and designated as Atlantic standard time; that of the second zone shall be known and designated as eastern standard time; that of the third zone shall be known and designated as central standard time; that of the fourth zone shall be known and designated as mountain standard time; that of the fifth zone shall be known and designated as Pacific standard time; that of the sixth zone shall be known and designated as Alaska standard time; that of the seventh zone shall be known and designated as Hawaii-Aleutian standard time; that of the eighth zone shall be known and designated as Samoa standard time; and that of the ninth zone shall be known as Chamorro standard time.

(Mar. 19, 1918, ch. 24, §4, 40 Stat. 451; Pub. L. 89-387, §4(c), Apr. 13, 1966, 80 Stat. 108; Pub. L. 98-181, title II, §2003(a), Nov. 30, 1983, 97 Stat. 1297; Pub. L. 106-564, §1(b), Dec. 23, 2000, 114 Stat. 2811.)

EDITORIAL NOTES

AMENDMENTS

2000—Pub. L. 106-564 struck out "and" before "that of the eighth" and inserted before period at end "; and that of the ninth zone shall be known as Chamorro standard time".

1983—Pub. L. 98-181 substituted "Alaska" for "Yukon", "Hawaii-Aleutian" for "Alaska-Hawaii", and "Samoa" for "Bering".

1966—Pub. L. 89-387 added Atlantic standard time as first zone designation; redesignated as eastern standard time, central standard time, mountain standard time and Pacific standard time for second through fifth zones former designation of United States standard eastern time, United States standard central time, United States standard mountain time and United States standard Pacific time for former zones one through four; added Yukon standard time as sixth zone designation; redesignated as Alaska-Hawaii standard time for seventh zone former designation of United States standard Alaska time for fifth zone; and added Bering standard time as eighth zone designation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONFORMING CHANGES IN TIME ZONE DESIGNATIONS

Pub. L. 98–181, title II, §2003(b), Nov. 30, 1983, 97 Stat. 1297, provided that:

"(1) Any reference to Yukon standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Alaska standard time.

"(2) Any reference to Alaska-Hawaii standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Hawaii-Aleutian standard time.

"(3) Any reference to Bering standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Samoa standard time."

§264. Part of Idaho in fourth zone

In the division of territory, and in the definition of the limits of each zone, as provided in sections 261 to 264 of this title, so much of the State of Idaho as lies south of the Salmon River, traversing the State from east to west near forty-five degrees thirty minutes latitude, shall be embraced in the fourth zone: *Provided*, That common carriers within such portion of the State of Idaho may conduct their operations on Pacific time.

(Mar. 19, 1918, ch. 24, §3, as added Mar. 3, 1923, ch. 216, 42 Stat. 1434; amended June 24, 1948, ch. 631, §1, 62 Stat. 646; Pub. L. 110–69, title III, §3013(c)(4), Aug. 9, 2007, 121 Stat. 599.)

EDITORIAL NOTES

PRIOR PROVISIONS

The original section 3 of act Mar. 19, 1918, providing for daylight-savings, was repealed by act Aug. 20, 1919, ch. 51, 41 Stat. 280.

AMENDMENTS

2007—Pub. L. 110–69 substituted "fourth zone" for "third zone".

1948—Act June 24, 1948, inserted proviso relating to common carriers.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1948 AMENDMENT

Act June 24, 1948, ch. 631, §2, 62 Stat. 646, provided that: "This Act [amending this section] shall take effect at 2 o'clock antemeridian of the second Monday following the date of its enactment."

§265. Transfer of certain territory to standard central-time zone

The Panhandle and Plains sections of Texas and Oklahoma are transferred to and placed within the United States standard central-time zone.

The Secretary of Transportation is authorized and directed to issue an order placing the western boundary line of the United States standard central-time zone insofar as the same affect Texas and Oklahoma as follows:

Beginning at a point where such western boundary time zone line crosses the State boundary line between Kansas and Oklahoma; thence westerly along said State boundary line to the northwest corner of the State of Oklahoma; thence in a southerly direction along the west State boundary line of Oklahoma and the west State boundary line of Texas to the southeastern corner of the State of New Mexico; thence in a westerly direction along the State boundary line between the States of Texas and New Mexico to the Rio Grande River; thence down the Rio Grande River as the boundary line between the United States and Mexico: *Provided*, That the Chicago, Rock Island and Gulf Railway Company and the Chicago, Rock Island and Pacific Railway Company may use Tucumcari, New Mexico, as the point at which they change from central to mountain time and vice versa; the Colorado Southern and Fort Worth and Denver City Railway Companies may use Sixela, New

Mexico, as such changing point; the Atchison, Topeka and Santa Fe Railway Company and other branches of the Santa Fe system may use Clovis, New Mexico, as such changing point, and those railways running into or through El Paso may use El Paso as such point: *Provided further*, That this section shall not, except as herein provided, interfere with the adjustment of time zones as established by the Secretary of Transportation.

(Mar. 4, 1921, ch. 173, §1, 41 Stat. 1446; Pub. L. 97-449, §2(c), Jan. 12, 1983, 96 Stat. 2439.)

EDITORIAL NOTES

AMENDMENTS

1983—Pub. L. 97-449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Section 2 of act Mar. 4, 1921, repealed all conflicting laws and parts of laws.

TRANSFER OF EL PASO AND HUDSPETH COUNTIES, TEXAS, TO MOUNTAIN STANDARD TIME ZONE

Pub. L. 91-228, Apr. 10, 1970, 84 Stat. 119, provided: "That, notwithstanding the first section of the Act of March 4, 1921 (15 U.S.C. 265), the Secretary of Transportation may, upon the written request of the County Commissioners Court of El Paso County, Texas, change the boundary line between the central standard time zone and the mountain standard time zone, so as to place El Paso County in the mountain standard time zone, in the manner prescribed in section 1 of the Act of March 19, 1918, as amended (15 U.S.C. 261), and section 5 of the Act of April 13, 1966 (15 U.S.C. 266). In the same manner, the Secretary of Transportation may also place Hudspeth County, Texas, in the mountain standard time zone, if the Hudspeth County Commissioners Court so requests in writing and if El Paso County is to be placed in that time zone."

§266. Applicability of administrative procedure provisions

Subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all proceedings under this Act, sections 261 to 264 of this title, and section 265 of this title.

(Pub. L. 89-387, §5, Apr. 13, 1966, 80 Stat. 108.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89-387, Apr. 13, 1966, 80 Stat. 107, known as the "Uniform Time Act of 1966". For complete classification of this Act to the Code, see Short Title note set out under section 260 of this title and Tables.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7, of title 5" substituted in text for "The Administrative Procedure Act (5 U.S.C. 1001-1011)" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§267. "State" defined

As used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or any possession of the United States.

(Pub. L. 89-387, §7, Apr. 13, 1966, 80 Stat. 109; Pub. L. 106-564, §1(c), Dec. 23, 2000, 114 Stat. 2811.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89-387, Apr. 13, 1966, 80 Stat. 107, known as the "Uniform Time Act of 1966". For complete classification of this Act to the Code, see Short Title note set out under section 260 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-564 inserted "Guam, the Commonwealth of the Northern Mariana Islands," after "Puerto Rico,".

CHAPTER 7—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

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- 282a. Assessment of emerging technologies requiring research in metrology.
- 283 to 286. Repealed or Omitted.

§271. Findings and purposes

(a) The Congress finds and declares the following:

(1) The future well-being of the United States economy depends on a strong manufacturing base and requires continual improvements in manufacturing technology, quality control, and techniques for ensuring product reliability and cost-effectiveness.

(2) Precise measurements, calibrations, and standards help United States industry and manufacturing concerns compete strongly in world markets.

(3) Improvements in manufacturing and product technology depend on fundamental scientific and engineering research to develop (A) the precise and accurate measurement methods and measurement standards needed to improve quality and reliability, and (B) new technological processes by which such improved methods may be used in practice to improve manufacturing and to assist industry to transfer important laboratory discoveries into commercial products.

(4) Scientific progress, public safety, and product compatibility and standardization also depend on the development of precise measurement methods, standards, and related basic technologies.

(5) The National Bureau of Standards since its establishment has served as the Federal focal point in developing basic measurement standards and related technologies, has taken a lead role in stimulating cooperative work among private industrial organizations in efforts to surmount technological hurdles, and otherwise has been responsible for assisting in the improvement of industrial technology.

(6) The Federal Government should maintain a national science, engineering, and technology laboratory which provides measurement methods, standards, and associated technologies and which aids United States companies in using new technologies to improve products and manufacturing processes.

(7) Such national laboratory also should serve industry, trade associations, State technology programs, labor organizations, professional societies, and educational institutions by disseminating information on new basic technologies including automated manufacturing processes.

(b) It is the purpose of this chapter—

(1) to rename the National Bureau of Standards as the National Institute of Standards and Technology and to modernize and restructure that agency to augment its unique ability to enhance the competitiveness of American industry while maintaining its traditional function as lead national laboratory for providing the measurements, calibrations, and quality assurance techniques which underpin United States commerce, technological progress, improved product reliability and manufacturing processes, and public safety;

(2) to assist private sector initiatives to capitalize on advanced technology;

(3) to advance, through cooperative efforts among industries, universities, and government laboratories, promising research and development projects, which can be optimized by the private sector for commercial and industrial applications; and

(4) to promote shared risks, accelerated development, and pooling of skills which will be necessary to strengthen America's manufacturing industries.

(Mar. 3, 1901, ch. 872, §1, 31 Stat. 1449; Pub. L. 100–418, title V, §5111, Aug. 23, 1988, 102 Stat. 1427.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act" meaning act Mar. 3, 1901, ch. 872, 31 Stat. 1449, known as the National Institute of Standards and Technology Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: "The Office of Standard Weights and Measures shall be known as the National Bureau of Standards."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME; NATIONAL BUREAU OF STANDARDS REDESIGNATED NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Section 5115(c) of Pub. L. 100–418 provided that: "References in any other Federal law to the National Bureau of Standards shall be deemed to refer to the National Institute of Standards and Technology."

Act Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, created the Department of Labor and renamed the Department of Commerce and Labor as the Department of Commerce.

SHORT TITLE OF 2023 AMENDMENT

Pub. L. 118–23, §1, Dec. 19, 2023, 137 Stat. 125, provided that: "This Act [enacting section 278u of this title] may be cited as the 'Testing, Rapid Analysis, and Narcotic Quality Research Act of 2023' or the 'TRANQ Research Act of 2023'."

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–207, §1, Dec. 4, 2020, 134 Stat. 1001, provided that: "This Act [enacting sections 278g–3a to 278g–3e of this title and provisions set out as a note under section 278g–3a of this title] may be cited as the 'Internet of Things Cybersecurity Improvement Act of 2020' or the 'IoT Cybersecurity Improvement Act of 2020'."

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–236, §1, Aug. 14, 2018, 132 Stat. 2444, provided that: "This Act [amending section 272 of this title and enacting provisions set out as notes under section 272 of this title] may be cited as the 'NIST Small Business Cybersecurity Act'."

SHORT TITLE OF 2017 AMENDMENT

Pub. L. 114–329, title V, §501(a), Jan. 6, 2017, 130 Stat. 3023, provided that: "This section [enacting section 278k–1 of this title, amending sections 278g–5, 278k, and 278l of this title and section 2199 of Title 10, Armed Forces, and enacting provisions set out as notes under section 278k of this title] may be cited as the

'Manufacturing Extension Partnership Improvement Act'."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–235, div. B, title VII, §701, Dec. 16, 2014, 128 Stat. 2220, provided that: "This title [enacting section 278s of this title, amending section 3722 of this title and section 6622 of Title 42, The Public Health and Welfare, enacting provisions set out as a note under section 278s of this title, and amending provisions set out as a note under this section] may be cited as the 'Revitalize American Manufacturing and Innovation Act of 2014'."

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–358, title VII, §701, Jan. 4, 2011, 124 Stat. 4041, provided that: "This title [amending section 278k of this title and enacting provisions set out as a note under section 278k of this title] may be cited as the 'NIST Grants for Energy Efficiency, New Job Opportunities, and Business Solutions Act of 2010' or the 'NIST GREEN JOBS Act of 2010'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–240, title IV, §4221, Sept. 27, 2010, 124 Stat. 2596, provided that: "This part [part I (§§4221–4228) of subtitle B of title IV of Pub. L. 111–240, amending section 278k of this title and enacting provisions set out as a note under section 278n of this title] may be cited as the 'Export Promotion Act of 2010'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–309, §1, Oct. 30, 1998, 112 Stat. 2935, provided that: "This Act [enacting sections 278g–2a, 278p, and 1511e of this title, amending sections 278k, 3704, and 3711a of this title, enacting provisions set out as notes under sections 272 and 3711 of this title, and amending provisions set out as a note under this section] may be cited as the 'Technology Administration Act of 1998'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–245, title II, §201(a), Feb. 14, 1992, 106 Stat. 15, provided that: "This title [amending sections 272 and 278n of this title and enacting provisions set out as notes under section 278n of this title] may be cited as the 'Emerging Technologies and Advanced Technology Program Amendments Act of 1991'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, title V, §5101, Aug. 23, 1988, 102 Stat. 1426, provided that: "This part [part I (§§5101–5164) of subtitle B of title V of Pub. L. 100–418, enacting sections 205j–1, 278i to 278o, 282a, 1532, 1533, 3704a, and 4632 of this title, amending this section, sections 205a, 205b, 205k, 272 to 275, 278, 278b, 278d, 278e, 278g to 278g–4, 3703, 3706, 3708, 3710, 3710c, and 3713 of this title, and section 5315 of Title 5, Government Organization and Employees, repealing sections 280 to 282 of this title, enacting provisions set out as notes under this section, sections 272, 278l, and 278n of this title, and section 1803 of Title 30, Mineral Lands and Mining, and amending provisions set out as a note under this section] may be cited as the 'Technology Competitiveness Act'."

SHORT TITLE

Act Mar. 3, 1901, ch. 872, §36, formerly §23, as added by Pub. L. 100–235, §3(3), Jan. 8, 1988, 101 Stat. 1728; renumbered §31 and amended Pub. L. 100–418, title V, §§5114(1), 5115(a)(2), Aug. 23, 1988, 102 Stat. 1432, 1433; renumbered §32, Pub. L. 105–309, §4(a), Oct. 30, 1998, 112 Stat. 2935; renumbered §34, Pub. L. 110–69, title III, §3007(1), Aug. 9, 2007, 121 Stat. 590; renumbered §35, Pub. L. 113–235, div. B, title VII, §703(1), Dec. 16, 2014, 128 Stat. 2221; renumbered §36, Pub. L. 117–167, div. B, title II, §10230(1), Aug. 9, 2022, 136 Stat. 1482, provided that: "This Act [enacting this chapter] may be cited as the National Institute of Standards and Technology Act."

SAVINGS PROVISION

Act Mar. 3, 1901, ch. 872, §29, as added Aug. 23, 1988, Pub. L. 100–418, title V, §5161, 102 Stat. 1449, provided that: "All rules and regulations, determinations, standards, contracts, certifications, authorizations, delegations, results and findings of investigations, or other actions duly issued, made, or taken by or pursuant to this Act [enacting this chapter], or under the authority of any other statutes which resulted in the assignment of functions or activities to the Secretary, the Department, the Director, or the Institute, as are in effect immediately before the date of enactment of this section [Aug. 23, 1988], and not suspended by the Secretary, the Director, the Institute or the courts, shall continue in full force and effect after the date of enactment of this section until modified or rescinded."

§272. Establishment, functions, and activities

(a) Establishment of National Institute of Standards and Technology

There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this chapter referred to as the "Institute").

(b) Functions of Secretary and Institute

The Secretary of Commerce (hereafter in this chapter referred to as the "Secretary") acting through the Director of the Institute (hereafter in this chapter referred to as the "Director") is authorized to serve as the President's principal adviser on standards policy pertaining to the Nation's technological competitiveness and innovation ability and to take all actions necessary and appropriate to accomplish the purposes of this chapter, including the following functions of the Institute—

(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies;

(2) to develop, maintain, and retain custody of the national standards of measurement, and provide the means and methods for making measurements consistent with those standards;

(3) to facilitate standards-related information sharing and cooperation between Federal agencies and to coordinate the use by Federal agencies of private sector standards, emphasizing where possible the use of standards developed by private, consensus organizations;

(4) to enter into and perform such contracts, including cooperative research and development arrangements and grants and cooperative agreements or other transactions, as may be necessary in the conduct of its work and on such terms as it may determine appropriate, in furtherance of the purposes of this chapter;

(5) to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;

(6) to assist industry in the development of measurements, measurement methods, and basic measurement technology;

(7) to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;

(8) to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government;

(9) to assure the compatibility of United States national measurement standards with those of other nations;

(10) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

(11) to advise government and industry on scientific and technical problems;

(12) to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs; and

(13) to coordinate technical standards activities and conformity assessment activities of Federal, State, and local governments with private sector technical standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures.

(c) Implementation activities

In carrying out the functions specified in subsection (b), the Secretary, acting through the Director ¹ may, among other things—

- (1) construct physical standards;
- (2) test, calibrate, and certify standards and standard measuring apparatus;
- (3) study and improve instruments, measurement methods, and industrial process control and quality assurance techniques;
- (4) cooperate with the States in securing uniformity in weights and measures laws and methods of inspection;
- (5) cooperate with foreign scientific and technical institutions to understand technological developments in other countries better;
- (6) prepare, certify, and sell standard reference materials for use in ensuring the accuracy of chemical analyses and measurements of physical and other properties of materials;
- (7) in furtherance of the purposes of this chapter, accept research associates, cash donations, and donated equipment from industry, and also engage with industry in research to develop new basic and generic technologies for traditional and new products and for improved production and manufacturing;
- (8) study and develop fundamental scientific understanding and improved measurement, analysis, synthesis, processing, and fabrication methods for chemical substances and compounds, ferrous and nonferrous metals, and all traditional and advanced materials, including processes of degradation;
- (9) investigate ionizing and nonionizing radiation and radioactive substances, their uses, and ways to protect people, structures, and equipment from their harmful effects;
- (10) determine the atomic and molecular structure of matter, through analysis of spectra and other methods, to provide a basis for predicting chemical and physical structures and reactions and for designing new materials and chemical substances, including biologically active macromolecules;
- (11) perform research on electromagnetic waves, including optical waves, and on properties and performance of electrical, electronic, and electromagnetic devices and systems and their essential materials, develop and maintain related standards, and disseminate standard signals through broadcast and other means;
- (12) develop and test standard interfaces, communication protocols, and data structures for computer and related telecommunications systems;
- (13) study computer systems (as that term is defined in section 278g–3(d) ² of this title) and their use to control machinery and processes;
- (14) perform research to develop standards and test methods to advance the effective use of computers and related systems and to protect the information stored, processed, and transmitted by such systems and to provide advice in support of policies affecting Federal computer and related telecommunications systems;
- (15) on an ongoing basis, facilitate and support the development of a voluntary, consensus-based, industry-led set of standards, guidelines, best practices, methodologies, procedures, and processes to cost-effectively reduce cyber risks to critical infrastructure (as defined under subsection (e));
- (16) support information security measures for the development and lifecycle of software and the software supply chain, including development of voluntary, consensus-based technical standards, best practices, frameworks, methodologies, procedures, processes, and software engineering toolkits and configurations;
- (17) support information security measures, including voluntary, consensus-based technical standards, best practices, and guidelines, for the design, adoption, and deployment of cloud computing services;
- (18) support research, development, and practical application to improve the usability of cybersecurity processes and technologies;

(19) facilitate and support the development of a voluntary, consensus-based set of technical standards, guidelines, best practices, methodologies, procedures, and processes to improve privacy protections in systems, technologies, and processes used by both the public and private sector;

(20) support privacy measures, including voluntary, consensus-based technical standards, best practices, guidelines, metrology, and testbeds for the design, adoption, and deployment of privacy enhancing technologies;

(21) perform research to support the development of voluntary, consensus-based, industry-led standards and recommendations on the security of computers, computer networks, and computer data storage used in election systems to ensure voters can vote securely and privately;

(22) determine properties of building materials and structural elements, and encourage their standardization and most effective use, including investigation of fire-resisting properties of building materials and conditions under which they may be most efficiently used, and the standardization of types of appliances for fire prevention;

(23) undertake such research in engineering, pure and applied mathematics, statistics, computer science, materials science, and the physical sciences as may be necessary to carry out and support the functions specified in this section;

(24) host, participate in, and support scientific and technical workshops (as defined in section 202 of the American Innovation and Competitiveness Act);

(25) collect and retain any fees charged by the Secretary for hosting a scientific and technical workshop described in paragraph (19); ²

(26) notwithstanding title 31 of the United States Code, use the fees described in paragraph (20) ² to pay for any related expenses, including subsistence expenses for participants;

(27) compile, evaluate, publish, and otherwise disseminate general, specific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere;

(28) collect, create, analyze, and maintain specimens of scientific value;

(29) operate national user facilities;

(30) evaluate promising inventions and other novel technical concepts submitted by inventors and small companies and work with other Federal agencies, States, and localities to provide appropriate technical assistance and support for those inventions which are found in the evaluation process to have commercial promise;

(31) demonstrate the results of the Institute's activities by exhibits or other methods of technology transfer, including the use of scientific or technical personnel of the Institute for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties; and

(32) undertake such other activities similar to those specified in this subsection as the Director determines appropriate.

(d) Management costs

In carrying out the extramural funding programs of the Institute, including the programs established under sections 278k and 278l of this title, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.

(e) Cyber risks

(1) In general

In carrying out the activities under subsection (c)(15), the Director—

(A) shall—

(i) coordinate closely and regularly with relevant private sector personnel and entities, critical infrastructure owners and operators, and other relevant industry organizations, including Sector Coordinating Councils and Information Sharing and Analysis Centers, and incorporate industry expertise;

(ii) consult with the heads of agencies with national security responsibilities, sector-specific agencies and other appropriate agencies, State and local governments, the governments of other nations, and international organizations;

(iii) identify a prioritized, flexible, repeatable, performance-based, and cost-effective approach, including information security measures and controls, that may be voluntarily adopted by owners and operators of critical infrastructure to help them identify, assess, and manage cyber risks;

(iv) include methodologies—

(I) to identify and mitigate impacts of the cybersecurity measures or controls on business confidentiality; and

(II) to protect individual privacy and civil liberties;

(v) incorporate voluntary consensus standards and industry best practices;

(vi) align with voluntary international standards to the fullest extent possible;

(vii) prevent duplication of regulatory processes and prevent conflict with or superseding of regulatory requirements, mandatory standards, and related processes;

(viii) consider small business concerns (as defined in section 632 of this title);

(ix) consider institutions of higher education (as such term is defined in section 1001 of title 20); and

(x) include such other similar and consistent elements as the Director considers necessary; and

(B) shall not prescribe or otherwise require—

(i) the use of specific solutions;

(ii) the use of specific information or communications technology products or services; or

(iii) that information or communications technology products or services be designed, developed, or manufactured in a particular manner.

(2) Limitation

Information shared with or provided to the Institute for the purpose of the activities described under subsection (c)(15) shall not be used by any Federal, State, tribal, or local department or agency to regulate the activity of any entity. Nothing in this paragraph shall be construed to modify any regulatory requirement to report or submit information to a Federal, State, tribal, or local department or agency.

(3) Definitions

In this subsection:

(A) Critical infrastructure

The term "critical infrastructure" has the meaning given the term in section 5195c(e) of title 42.

(B) Sector-specific agency

The term "sector-specific agency" means the Federal department or agency responsible for providing institutional knowledge and specialized expertise as well as leading, facilitating, or supporting the security and resilience programs and associated activities of its designated critical infrastructure sector in the all-hazards environment.

(Mar. 3, 1901, ch. 872, §2, 31 Stat. 1449; July 22, 1950, ch. 486, §1, 64 Stat. 371; Pub. L. 92–317, §3(b), June 22, 1972, 86 Stat. 235; Pub. L. 100–235, §3(1), Jan. 8, 1988, 101 Stat. 1724; Pub. L. 100–418, title V, §5112(a), Aug. 23, 1988, 102 Stat. 1428; Pub. L. 102–245, title II, §201(e), Feb. 14, 1992, 106 Stat. 19; Pub. L. 104–113, §12(a), (b), Mar. 7, 1996, 110 Stat. 782; Pub. L. 110–69, title III, §§3002(c)(2)(A), 3013(b), Aug. 9, 2007, 121 Stat. 586, 598; Pub. L. 113–274, title I, §101(a), (b), Dec. 18, 2014, 128 Stat. 2972; Pub. L. 114–329, title I, §104(b)(4), title II, §§202(d),

205(a)(2)(B), title IV, §403, Jan. 6, 2017, 130 Stat. 2976, 2998, 3000, 3023; Pub. L. 115–236, §2(b), Aug. 14, 2018, 132 Stat. 2444; Pub. L. 117–167, div. B, title II, §§10223, 10228, 10242(a), Aug. 9, 2022, 136 Stat. 1477, 1481, 1487.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 278g–3 of this title, referred to in subsec. (c)(13), was amended, and no longer defines the term "computer systems".

Section 202 of the American Innovation and Competitiveness Act, referred to in subsec. (c)(24), is section 202 of Pub. L. 114–329, title II, Jan. 6, 2017, 130 Stat. 2997. Subsec. (a) of that section, which defines "scientific and technical workshop", is not classified to the Code.

Paragraphs (19) and (20), referred to in subsec. (c)(25) and (26), were redesignated as pars. (24) and (25), respectively, of subsec. (c) of this section by Pub. L. 117–167, div. B, title II, §10223(2), Aug. 9, 2022, 136 Stat. 1477.

AMENDMENTS

2022—Subsec. (b)(4). Pub. L. 117–167, §10242(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "to enter into contracts, including cooperative research and development arrangements, and grants and cooperative agreements, in furtherance of the purposes of this chapter;".

Subsec. (c)(16). Pub. L. 117–167, §10223(3), added par. (16). Former par. (16) redesignated (21).

Pub. L. 117–167, §10223(1), substituted semicolon for period at end.

Subsec. (c)(17) to (32). Pub. L. 117–167, §10223(2), (3), added pars. (17) to (20) and redesignated former pars. (16) to (27) as (21) to (32), respectively.

Subsec. (e)(1)(A)(ix), (x). Pub. L. 117–167, §10228, added cl. (ix) and redesignated former cl. (ix) as (x).

2018—Subsec. (e)(1)(A)(viii), (ix). Pub. L. 115–236 added cl. (viii) and redesignated former cl. (viii) as (ix).

2017—Subsec. (b). Pub. L. 114–329, §403(1), in introductory provisions, substituted "authorized to serve as the President's principal adviser on standards policy pertaining to the Nation's technological competitiveness and innovation ability and to take" for "authorized to take".

Subsec. (b)(3). Pub. L. 114–329, §403(2), substituted "facilitate standards-related information sharing and cooperation between Federal agencies" for "compare standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government".

Subsec. (b)(13). Pub. L. 114–329, §403(3), substituted "technical standards activities and conformity assessment activities of Federal, State, and local governments with private sector" for "Federal, State, and local technical standards activities and conformity assessment activities, with private sector".

Subsec. (c)(16) to (27). Pub. L. 114–329, §§104(b)(4), 202(d), added pars. (16) and (19) to (21), redesignated former pars. (16) and (17) as (17) and (18), respectively, and redesignated former pars. (18) to (23) as (22) to (27), respectively.

Subsec. (d). Pub. L. 114–329, §205(a)(2)(B), substituted "sections 278k and 278l" for "sections 278k, 278l, and 278n".

2014—Subsec. (c)(15) to (23). Pub. L. 113–274, §101(a), added par. (15) and redesignated former pars. (15) to (22) as (16) to (23), respectively.

Subsec. (e). Pub. L. 113–274, §101(b), added subsec. (e).

2007—Subsec. (b). Pub. L. 110–69, §3002(c)(2)(A)(i), struck out "and, if appropriate, through other officials," before "is authorized" in introductory provisions.

Subsec. (b)(4). Pub. L. 110–69, §3013(b), inserted "and grants and cooperative agreements," after "arrangements,".

Subsec. (c). Pub. L. 110–69, §3002(c)(2)(A)(ii), struck out "and, if appropriate, through other appropriate officials," before "may," in introductory provisions.

1996—Subsec. (b)(2). Pub. L. 104–113, §12(a)(1), struck out ", including comparing standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government" after "consistent with those standards".

Subsec. (b)(3) to (12). Pub. L. 104–113, §12(a)(2), (3), added par. (3) and redesignated former pars. (3) to (11) as (4) to (12), respectively.

Subsec. (b)(13). Pub. L. 104–113, §12(b)(3), added par. (13).

1992—Subsec. (d). Pub. L. 102–245 added subsec. (d).

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to establishment, functions and activities of the National Institute of Standards and Technology and the Secretary of Commerce for provisions which authorized Secretary to undertake certain enumerated functions and activities related to the National Bureau of Standards and for which need might arise in operations of Government agencies, scientific institutions, and industrial enterprises.

Par. (20). Pub. L. 100–235 added par. (20).

1972—Par. (19). Pub. L. 92–317 inserted provisions authorizing use of National Bureau of Standards personnel for teaching and training activities without additional compensation.

1950—Act July 22, 1950, provided basic authority for performance of certain functions and activities of Department of Commerce.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to a Sector Specific Agency (including any permutations or conjugations thereof) deemed to be a reference to the Sector Risk Management Agency of the relevant critical infrastructure sector and have the meaning given such term in section 650 of Title 6, Domestic Security, see section 652a(c)(3) of Title 6, enacted Jan. 1, 2021.

CONSTRUCTION OF PUB. L. 115–236

Pub. L. 115–236, §2(d), Aug. 14, 2018, 132 Stat. 2445, provided that: "Nothing in this section [amending this section and enacting provisions set out as notes under this section] may be construed to supersede, alter, or otherwise affect any cybersecurity requirements applicable to Federal agencies."

REPORTING

Pub. L. 117–167, div. B, title II, §10242(b), Aug. 9, 2022, 136 Stat. 1487, provided that: "Not later than one year after the date of the enactment of this Act [Aug. 9, 2022] and not less than annually thereafter, the Secretary [of Commerce] shall submit to the Committee on Science, Space, and Technology and the Committee on Appropriations of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate a report on the use of agreements, activities, and associated funding for transactions (other than contracts, cooperative agreements, and grants) described in paragraph (4) of section 2(b) of the National Institute of Standards and Technology Act [15 U.S.C. 272(b)(4)] (as amended by subsection (a)), including the following elements:

"(1) A description of when the other transactions authority described in such amended paragraph was used and for what purpose.

"(2) A description of why such other transactions authority was required.

"(3) Steps taken to ensure necessary and sufficient oversight of Federal Government requirements implemented using such other transactions authority."

DISSEMINATION OF RESOURCES FOR SMALL BUSINESSES

Pub. L. 115–236, §2(c), Aug. 14, 2018, 132 Stat. 2444, as amended by Pub. L. 116–283, div. H, title XCIV, §9401(g)(4)(B), Jan. 1, 2021, 134 Stat. 4809, provided that:

"(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act [Aug. 14, 2018], the Director, in carrying out section 2(e)(1)(A)(viii) of the National Institute of Standards and Technology Act [15 U.S.C. 272(e)(1)(A)(viii)], as added by subsection (b) of this Act, in consultation with the heads of other appropriate Federal agencies, shall disseminate clear and concise resources to help small business concerns identify, assess, manage, and reduce their cybersecurity risks.

"(2) **REQUIREMENTS.**—The Director shall ensure that the resources disseminated pursuant to paragraph (1)—

"(A) are generally applicable and usable by a wide range of small business concerns;

"(B) vary with the nature and size of the implementing small business concern, and the nature and sensitivity of the data collected or stored on the information systems or devices of the implementing small business concern;

"(C) include elements, that promote awareness of simple, basic controls, a workplace cybersecurity culture, and third-party stakeholder relationships, to assist small business concerns in mitigating common cybersecurity risks;

"(D) include case studies of practical application;

"(E) are technology-neutral and can be implemented using technologies that are commercial and off-the-shelf; and

"(F) are based on international standards to the extent possible, and are consistent with the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

"(3) NATIONAL CYBERSECURITY AWARENESS AND EDUCATION PROGRAM.—The Director shall ensure that the resources disseminated under paragraph (1) are consistent with the efforts of the Director under section 303 of the Cybersecurity Enhancement Act of 2014 (Public Law 113–274) [15 U.S.C. 7443].

"(4) SMALL BUSINESS DEVELOPMENT CENTER CYBER STRATEGY.—In carrying out paragraph (1), the Director, to the extent practicable, shall consider any methods included in the Small Business Development Center Cyber Strategy developed under section 1841(a)(3)(B) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328) [130 Stat. 2662].

"(5) VOLUNTARY RESOURCES.—The use of the resources disseminated under paragraph (1) shall be considered voluntary.

"(6) UPDATES.—The Director shall review and, if necessary, update the resources disseminated under paragraph (1) in accordance with the requirements under paragraph (2).

"(7) PUBLIC AVAILABILITY.—The Director and the head of each Federal agency that so elects shall make prominently available on the respective agency's public Internet website information about the resources and updates to the resources disseminated under paragraph (1). The Director and the heads shall each ensure that the information they respectively make prominently available is consistent, clear, and concise."

NIST CYBERSECURITY PRIORITIES

Pub. L. 114–329, title I, §104(b)(1), (2), Jan. 6, 2017, 130 Stat. 2975, provided that:

"(1) CRITICAL INFRASTRUCTURE AWARENESS.—The Director of NIST [National Institute of Standards and Technology] shall continue to raise public awareness of the voluntary, industry-led cybersecurity standards and best practices for critical infrastructure developed under section 2(c)(15) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)(15)).

"(2) QUANTUM COMPUTING.—Under section 2(b) of the National Institute of Standards and Technology Act (15 U.S.C. 272(b)) and section 20 of that Act (15 U.S.C. 278g–3), the Director of NIST shall—

"(A) research information systems for future cybersecurity needs; and

"(B) coordinate with relevant stakeholders to develop a process—

"(i) to research and identify or, if necessary, develop cryptography standards and guidelines for future cybersecurity needs, including quantum-resistant cryptography standards; and

"(ii) to provide recommendations to Congress, Federal agencies, and industry consistent with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113; 110 Stat. 775), for a secure and smooth transition to the standards under clause (i)."

LABORATORY PROGRAM IMPROVEMENTS

Pub. L. 114–329, title I, §107, Jan. 6, 2017, 130 Stat. 2987, provided that:

"(a) IN GENERAL.—The Director of NIST [National Institute of Standards and Technology], acting through the Associate Director for Laboratory Programs, shall develop and implement a comprehensive strategic plan for laboratory programs that expands—

"(1) interactions with academia, international researchers, and industry; and

"(2) commercial and industrial applications.

"(b) OPTIMIZING COMMERCIAL AND INDUSTRIAL APPLICATIONS.—In accordance with the purpose under section 1(b)(3) of the National Institute of Standards and Technology Act (15 U.S.C. 271(b)(3)), the comprehensive strategic plan shall—

"(1) include performance metrics for the dissemination of fundamental research results, measurements, and standards research results to industry, including manufacturing, and other interested parties;

"(2) document any positive benefits of research on the competitiveness of the interested parties described in paragraph (1);

"(3) clarify the current approach to the technology transfer activities of NIST; and

"(4) consider recommendations from the National Academy of Sciences."

ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS

Pub. L. 105–309, §6, Oct. 30, 1998, 112 Stat. 2936, as amended by Pub. L. 114–329, title II, §204(a)(1)(A), Jan. 6, 2017, 130 Stat. 2998, provided that:

"(a) DEFINITIONS.—In this section—

"(1) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT.—The term 'educationally useful

Federal equipment' means computers and related peripheral tools and research equipment that is appropriate for use in schools.

"(2) SCHOOL.—The term 'school' means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

"(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Director of the National Institute of Standards and Technology should, to the greatest extent practicable and in a manner consistent with applicable Federal law (including Executive Order No. 12999 [40 U.S.C. 549 note]), donate educationally useful Federal equipment to schools in order to enhance the science and mathematics programs of those schools."

TRANSMITTAL OF PLAN FOR STANDARDS CONFORMITY TO CONGRESS

Pub. L. 104–113, §12(c), Mar. 7, 1996, 110 Stat. 783, provided that: "The National Institute of Standards and Technology shall, within 90 days after the date of enactment of this Act [Mar. 7, 1996], transmit to the Congress a plan for implementing the amendments made by this section [amending this section and enacting provisions set out as a note below]."

UTILIZATION OF CONSENSUS TECHNICAL STANDARDS BY FEDERAL AGENCIES

Pub. L. 104–113, §12(d), Mar. 7, 1996, 110 Stat. 783, as amended by Pub. L. 107–107, div. A, title XI, §1115, Dec. 28, 2001, 115 Stat. 1241, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

"(2) CONSULTATION; PARTICIPATION.—In carrying out paragraph (1) of this subsection, Federal agencies and departments shall consult with voluntary, private sector, consensus standards bodies and shall, when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources, participate with such bodies in the development of technical standards.

"(3) EXCEPTION.—If compliance with paragraph (1) of this subsection is inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of each such agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. Each year, beginning with fiscal year 1997, the Office of Management and Budget shall transmit to Congress and its committees a report summarizing all explanations received in the preceding year under this paragraph.

"(4) EXPENSES OF GOVERNMENT PERSONNEL.—Section 5946 of title 5, United States Code, shall not apply with respect to any activity of an employee of a Federal agency or department that is determined by the head of that agency or department as being an activity undertaken in carrying out this subsection.

"(5) DEFINITION OF TECHNICAL STANDARDS.—As used in this subsection, the term 'technical standards' means performance-based or design-specific technical specifications and related management systems practices."

INTERNATIONAL STANDARDS

Pub. L. 100–519, title I, §112, Oct. 24, 1988, 102 Stat. 2592, provided that:

"(a) PROGRAM.—The Secretary, acting through the Director of the National Institute of Standards and Technology and other appropriate officials, shall seek funding for and establish, within 6 months after the date of the enactment of this Act [Oct. 24, 1988], a program to assist other countries in the development of their domestic standards which are compatible with standards in general use in the United States. After the program is established, it shall be funded through voluntary contributions from the private sector to fully reimburse the United States for expenses incurred during fiscal years 1989 and 1990. The program shall begin on a pilot basis focusing on one or two countries or groups of countries which are major United States trading partners and have expressed interest in such program. The Secretary shall ensure that contributions which are earmarked by country are spent to assist the development of standards by that country or group of countries.

"(b) LONG-TERM PLAN.—No later than June 30, 1989, the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a long-term plan for assistance under this section for each nation or group of nations which annually has imports of at least \$1,000,000,000 from the United States (or has the potential for being a major importer from the United States) and which desires such assistance. The plan shall include a description of the resources needed to provide such assistance, the appropriate and likely sources of such funds, and the appropriate relationship between the program established under this section and private sector

standards organizations. Special consideration is to be given to the feasibility of establishing a data base and other methods for making standards information developed in cooperation with one country available to other countries."

INITIAL ORGANIZATION PLAN FOR INSTITUTE

Pub. L. 100-418, title V, §5112(d), Aug. 23, 1988, 102 Stat. 1431, provided that:

"(1) At least 60 days before its effective date and within 120 days after the date of the enactment of this Act [Aug. 23, 1988], an initial organization plan for the National Institute of Standards and Technology (hereafter in this part [see Short Title of 1988 Amendment note set out under section 271 of this title] referred to as the 'Institute') shall be submitted by the Director of the Institute (hereafter in this part referred to as the 'Director') after consultation with the Visiting Committee on Advanced Technology, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such plan shall—

"(A) establish the major operating units of the Institute;

"(B) assign each of the activities listed in section 2(c) of the Act of March 3, 1901 [15 U.S.C. 272(c)], and all other functions and activities of the Institute, to at least one of the major operating units established under subparagraph (A);

"(C) provide details of a 2-year program for the Institute, including the Advanced Technology Program;

"(D) provide details regarding how the Institute will expand and fund the Inventions program in accordance with section 27 of the Act of March 3, 1901 [former 15 U.S.C. 278m]; and

"(E) make no changes in the Center for Building Technology or the Center for Fire Research.

"(2) The Director may revise the organization plan. Any revision of the organization plan submitted under paragraph (1) shall be submitted to the appropriate committees of the House of Representatives and the Senate at least 60 days before the effective date of such revision.

"(3) Until the effective date of the organization plan, the major operating units of the Institute shall be the major operating units of the National Bureau of Standards that were in existence on the date of the enactment of this Act [Aug. 23, 1988] and the Advanced Technology Program."

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY; SMALL BUSINESS PLAN

Pub. L. 100-418, title V, §5163(b), Aug. 23, 1988, 102 Stat. 1450, provided that: "The Director of the National Institute of Standards and Technology shall prepare a plan detailing the manner in which the Institute will make small businesses more aware of the Institute's activities and research, and the manner in which the Institute will seek to increase the application by small businesses of the Institute's research, particularly in manufacturing. The plan shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 120 days after the date of the enactment of this Act [Aug. 23, 1988]."

CONSTRUCTION OF RADIO LABORATORY BUILDING

Act Oct. 25, 1949, ch. 703, 63 Stat. 886, provided for the construction and equipment of a suitable radio laboratory building, together with necessary utilities and appurtenances thereto, under a limit of cost of \$4,475,000, for the National Bureau of Standards.

CONSTRUCTION OF A GUIDED-MISSILE RESEARCH LABORATORY

Act Oct. 25, 1949, ch. 728, 63 Stat. 905, provided for the construction and equipment of a research laboratory building, suitable for use as a guided-missile laboratory, together with necessary utilities and appurtenances thereto, under a limit of cost of \$1,900,000, for the National Bureau of Standards.

DEFINITIONS

Pub. L. 115-236, §2(a), Aug. 14, 2018, 132 Stat. 2444, provided that: "In this section [amending this section and enacting provisions set out as notes under this section]:

"(1) **DIRECTOR.**—The term 'Director' means the Director of the National Institute of Standards and Technology.

"(2) **RESOURCES.**—The term 'resources' means guidelines, tools, best practices, standards, methodologies, and other ways of providing information.

"(3) **SMALL BUSINESS CONCERN.**—The term 'small business concern' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632)."

¹ *So in original. Probably should be followed by a comma.*

² [See References in Text note below.](#)

§272a. Technology services

In addition to such other technology services and technology extension activities which may be mandated or authorized by law, and in order to help improve the use of technology by small and medium-sized industrial firms within the United States, the Director of the National Institute of Standards and Technology, as appropriate, shall—

(1) work directly with States, local governments, and other appropriate organizations to provide for extended distribution of Standard Reference Materials, Standard Reference Data, calibrations, and related technical services and to help transfer other expertise and technology to the States and to small businesses and other businesses within the States;

(2) evaluate those inventions from small businesses or individuals which have a significant potential for improving competitiveness;

(3) provide support for workshops on technical and entrepreneurial topics and share information developed through the Malcolm Baldrige Quality Award Program; and

(4) work with other Federal agencies to provide technical and related assistance to the States and businesses within the States.

(Pub. L. 100–519, title I, §109, Oct. 24, 1988, 102 Stat. 2591.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

§272b. Annual budget submission

The National Institute of Standards and Technology shall annually submit to the Congress, at the time of the release of the President's budget, a three year budget estimate for the Institute, including funding estimates for each major account and new initiative.

(Pub. L. 100–519, title I, §111, Oct. 24, 1988, 102 Stat. 2592.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

§273. Functions; for whom exercised

The Institute is authorized to exercise its functions for the Government of the United States and for international organizations of which the United States is a member; for governments of friendly countries; for any State or municipal government within the United States; or for any scientific society, educational institution, firm, corporation, or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments: *Provided*, That the exercise of these functions for international organizations, governments of friendly countries and scientific societies, educational institutions, firms,

corporations, or individuals therein shall be in coordination with other agencies of the United States Government, in particular the Department of State in respect to foreign entities. All requests for the services of the Institute shall be made in accordance with the rules and regulations herein established.

(Mar. 3, 1901, ch. 872, §3, 31 Stat. 1449; Pub. L. 92-317, §3(c), June 22, 1972, 86 Stat. 235; Pub. L. 100-418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

REFERENCES IN TEXT

"Herein", referred to in last sentence of this section, refers to act Mar. 3, 1901, ch. 872, which is classified generally to this chapter.

AMENDMENTS

1988—Pub. L. 100-418 substituted "Institute" for "Bureau" and for "bureau".

1972—Pub. L. 92-317 authorized the Bureau to extend its services to international organizations of which the United States is a member, and for governments of friendly countries in coordination with the Department of State.

§273a. Under Secretary of Commerce for Standards and Technology

(a) Establishment

There shall be in the Department of Commerce an Under Secretary of Commerce for Standards and Technology (in this section referred to as the "Under Secretary").

(b) Appointment

The Under Secretary shall be appointed by the President by and with the advice and consent of the Senate.

(c) Compensation

The Under Secretary shall be compensated at the rate in effect for level III of the Executive Schedule under section 5314 of title 5.

(d) Duties

The Under Secretary shall serve as the Director of the Institute and shall perform such duties as required of the Director by the Secretary under this chapter or by law.

(e) Applicability

The individual serving as the Director of the Institute on January 4, 2011, shall also serve as the Under Secretary until such time as a successor is appointed under subsection (b).

(Mar. 3, 1901, ch. 872, §4, as added Pub. L. 111-358, title IV, §403(a), Jan. 4, 2011, 124 Stat. 4000.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 4 of act Mar. 3, 1901, ch. 872, 31 Stat. 1449, which was not classified to the Code, was repealed.

§274. Director; powers and duties; report; compensation

The Director shall report directly to the Secretary and shall have the general supervision of the Institute, its equipment, and the exercise of its functions. The Director shall make an annual report to the Secretary of Commerce. The Director may issue, when necessary, bulletins for public

distribution, containing such information as may be of value to the public or facilitate the exercise of the functions of the Institute.

(Mar. 3, 1901, ch. 872, §5, 31 Stat. 1449; Pub. L. 99–73, §6(a), July 29, 1985, 99 Stat. 172; Pub. L. 100–418, title V, §5112(c)(1), Aug. 23, 1988, 102 Stat. 1431; Pub. L. 110–69, title III, §3002(c)(2)(B), Aug. 9, 2007, 121 Stat. 586; Pub. L. 111–358, title IV, §403(b)(2), Jan. 4, 2011, 124 Stat. 4000.)

EDITORIAL NOTES

AMENDMENTS

2011—Pub. L. 111–358 struck out at beginning "The Director shall be appointed by the President, by and with the advice and consent of the Senate." and struck out at end "The Director shall be compensated at the rate in effect for level IV of the Executive Schedule under section 5315 of title 5. Until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director."

2007—Pub. L. 110–69 substituted "The Director shall report directly to the Secretary and shall have the general" for "The Director shall have the general".

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to appointment, powers and duties, and compensation of, and reports by, Director of the Institute for similar provisions relating to Director of the Bureau of Standards, striking out requirement that the annual report include an abstract of the work done during the year and a financial statement, and inserting provision that until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director.

1985—Pub. L. 99–73 substituted "The Director" for "He" at beginning of second, third, and fourth sentences, and inserted provisions relating to compensation for the Director.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–73 effective Oct. 1, 1985, see section 6(c) of Pub. L. 99–73, set out as a note under section 5315 of Title 5, Government Organization and Employees.

§275. Hiring critical technical experts

(a) In general

The officers and employees of the Institute, except the director, shall be appointed by the Secretary at such time as their respective services may become necessary.

(b) Hiring critical technical experts

Notwithstanding section 3104 of title 5 or the provisions of any other law relating to the appointment, number, classification, or compensation of employees, the Secretary shall have the authority to make appointments of scientific, engineering, and professional personnel, and to fix the basic pay of such personnel at a rate to be determined by the Secretary at rates not in excess of the highest total annual compensation payable at the rate determined under section 104 of title 3. The Director shall appoint not more than 15 personnel under this section.

(c) Sunset

The authority under section ¹(b) shall expire on the date that is 5 years after August 9, 2022.

(Mar. 3, 1901, ch. 872, §6, 31 Stat. 1450; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 117–167, div. B, title II, §10244, Aug. 9, 2022, 136 Stat. 1488.)

EDITORIAL NOTES

CODIFICATION

August 9, 2022, referred to in subsec. (c), was in the original "the date of the enactment of this section", which was translated as meaning the date of enactment of Pub. L. 117-167, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2022—Pub. L. 117-167 amended section generally. Prior to amendment, text read as follows: "The officers and employees of the Institute, except the director, shall be appointed by the Secretary of Commerce at such time as their respective services may become necessary."

1988—Pub. L. 100-418 substituted "Institute" for "bureau".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred power and authority of Secretary of the Treasury over Bureau of Standards to Secretary of Commerce and Labor.

PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES

Pub. L. 110-69, title III, §3009, Aug. 9, 2007, 121 Stat. 592, permitted the Director of the National Institute of Standards and Technology, until Sept. 30, 2010, to procure the temporary or intermittent services of no more than 200 experts or consultants per year to assist with urgent or short-term research projects and required the Comptroller General to submit to Congress, no later than 2 years after Aug. 9, 2007, a report on possible additional safeguards needed should the authority under this section be made permanent.

DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT

Pub. L. 99-574, §10, Oct. 28, 1986, 100 Stat. 3238, as amended by Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, directed the Office of Personnel Management and the National Institute of Standards and Technology to jointly design an alternative personnel management system demonstration project to be commenced not later than Jan. 1, 1988, and to be conducted by the Director of the Institute in accordance with section 4703 of Title 5, Government Organization and Employees, with the Director of the Office of Personnel Management to provide that the project be evaluated annually by a contractor, and a report of the contractor's findings submitted to the Office, and, along with any comments of the Office and the Institute, submitted to the Congress, and a final report to be submitted to the Congress by the Comptroller General not later than 4 years after the date on which the project commences, such report to include any recommendations for legislation or other action considered appropriate by the Comptroller General.

[Pub. L. 104-113, §10, Mar. 7, 1996, 110 Stat. 779, provided that: "The personnel management demonstration project established under section 10 of the National Bureau of Standards Authorization Act for Fiscal Year 1987 [Pub. L. 99-574] (15 U.S.C. 275 note) is extended indefinitely."]

¹ *So in original. Probably should be "subsection".*

§275a. Service charges

The Secretary shall charge for services performed under the authority of section 273 of this title, except in cases where he determines that the interest of the Government would be best served by waiving the charge. Such charges may be based upon fixed prices or costs. The appropriation or fund bearing the cost of the services may be reimbursed, or the Secretary may require advance payment subject to such adjustment on completion of the work as may be agreed upon.

(Mar. 3, 1901, ch. 872, §7, as added Aug. 3, 1956, ch. 906, §1, 70 Stat. 959.)

EDITORIAL NOTES

CODIFICATION

Provisions relating to fees were formerly contained in section 276 of this title.

§275b. Charges for activities performed for other agencies

The Secretary of Commerce shall charge for any service performed by the Institute, at the request of another Government agency, in compliance with any statute, enacted before, on, or after October 6, 1982, which names the Secretary or the Institute as a consultant to another Government agency, or calls upon the Secretary or the Institute to support or perform any activity for or on behalf of another Government agency, or to cooperate with any Government agency in the performance by that agency of any activity, regardless of whether the statute specifically requires reimbursement to the Secretary or the Institute by such other Government agency for such service, unless funds are specifically appropriated to the Secretary or the Institute to perform such service. The Secretary may, however, waive any charge where the service rendered by the Institute is such that the Institute will incur only nominal costs in performing it. Costs shall be determined in accordance with section 278b(e) of this title.

(Pub. L. 97–286, §8, Oct. 6, 1982, 96 Stat. 1223; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted "Institute" for "Bureau" wherever appearing.

§275c. Cost recovery authority

Fees for calibration services, standard reference materials, and other comparable services provided by the National Institute of Standards and Technology shall be at least sufficient to meet the requirements set forth in the amendments made by subsection (a),¹ and any funds recovered in excess of such requirements shall be returned to the Treasury of the United States.

(Pub. L. 99–73, §5(b), July 29, 1985, 99 Stat. 172; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

REFERENCES IN TEXT

The amendments made by subsection (a), referred to in text, mean the amendments made by subsec. (a) of section 5 of Pub. L. 99–73, which amended section 278b(f) of this title.

CODIFICATION

Section was not enacted as part of the National Institute and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 99-73, §5(c), July 29, 1985, 99 Stat. 172, provided that: "The amendments made by subsection (a) [amending section 278b of this title] (and the provisions of subsection (b) [enacting this section]) shall be effective October 1, 1984."

¹ See References in Text note below.

§276. Ownership of facilities

In the absence of specific agreement to the contrary, additional facilities, including equipment, purchased pursuant to the performance of services authorized by section 273 of this title shall become the property of the Department of Commerce.

(Mar. 3, 1901, ch. 872, §8, 31 Stat. 1450; June 30, 1932, ch. 314, pt. II, title III, §312, 47 Stat. 410; Aug. 3, 1956, ch. 906, §1, 70 Stat. 959.)

EDITORIAL NOTES

AMENDMENTS

1956—Act Aug. 3, 1956, substituted provisions relating to ownership of additional facilities by the Department of Commerce (formerly contained in section 278b of this title) for those relating to fees, see section 275a of this title.

1932—Act June 30, 1932, inserted provision for payment of moneys into the Treasury, among other changes.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1932 AMENDMENT

Amendment by act June 30, 1932, effective July 1, 1932, see section 314 of that act.

§277. Regulations

The Secretary of Commerce shall, from time to time, make regulations regarding the payment of fees, the limits of tolerance to be attained in standards submitted for verification, the sealing of standards, the disbursement and receipt of moneys, and such other matters as he may deem necessary for carrying this chapter into effect.

(Mar. 3, 1901, ch. 872, §9, 31 Stat. 1450; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred power and authority of Secretary of the Treasury over Bureau of Standards to Secretary of Commerce and Labor.

§278. Visiting Committee on Advanced Technology

(a) Establishment; appointment; membership and composition; review and recommendations

There is established within the Institute a Visiting Committee on Advanced Technology (hereafter in this chapter referred to as the "Committee"). The Committee shall consist of not fewer than 9

members appointed by the Director, a majority of whom shall be from United States industry. The Director shall appoint as original members of the Committee any final members of the National Institute of Standards and Technology Visiting Committee who wish to serve in such capacity. In addition to any powers and functions otherwise granted to it by this chapter, the Committee shall review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

(b) Qualifications; recommendations for appointment

The persons appointed as members of the Committee—

- (1) shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations;
- (2) shall be selected solely on the basis of established records of distinguished service;
- (3) shall not be employees of the Federal Government; and
- (4) shall be so selected as to provide representation of a cross-section of the traditional and emerging United States industries.

The Director is requested, in making appointments of persons as members of the Committee, to give due consideration to any recommendations which may be submitted to the Director by the National Academies, professional societies, business associations, labor associations, and other appropriate organizations.

(c) Terms of office; eligibility

(1) The term of office of each member of the Committee, other than the original members, shall be 3 years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person who has completed two consecutive full terms of service on the Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(2) The original members of the Committee shall be elected to three classes of three members each; one class shall have a term of one year, one a term of two years, and the other a term of three years.

(d) Meetings; quorum; notice

The Committee shall meet at least twice each year at the call of the Chairman or whenever one-third of the members so request in writing. A majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee shall constitute a quorum. Each member shall be given appropriate notice, whenever possible, not less than 15 days prior to any meeting, of the call of such meeting.

(e) Appointment by Committee of executive and other committees

The Committee shall have an executive committee, and may delegate to it or to the Secretary such of the powers and functions granted to the Committee by this chapter as it deems appropriate. The Committee is authorized to appoint from among its members such other committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Committee deems appropriate to assist it in exercising its powers and functions under this chapter.

(f) Chairman; Vice Chairman

The election of the Chairman and Vice Chairman of the Committee shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Committee shall elect a member to fill such vacancy.

(g) Professional and clerical staff

The Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff

members as may be necessary. Such staff shall be appointed by the Director, after consultation with the Chairman of the Committee, and assigned at the direction of the Committee. The professional members of such staff may be appointed without regard to the provisions of title 5 governing appointments in the competitive service and the provisions of chapter 51 of title 5 relating to classification, and compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS-18 of the General Schedule under section 5332 of title 5, as may be necessary to provide for the performance of such duties as may be prescribed by the Committee in connection with the exercise of its powers and functions under this chapter.

(h) Annual and other reports to Secretary and Congress

(1) The Committee shall render an annual report to the Secretary for submission to the Congress not later than 30 days after the submittal to Congress of the President's annual budget request in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute or with which the Committee in its official role as the private sector policy advisor of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possesses special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures.

(2) The Committee shall render to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

(Mar. 3, 1901, ch. 872, §10, 31 Stat. 1450; Pub. L. 100-418, title V, §§5115(a)(1), 5131(b), Aug. 23, 1988, 102 Stat. 1433, 1441; Pub. L. 104-113, §8(1), Mar. 7, 1996, 110 Stat. 779; Pub. L. 110-69, title III, §§3005, 3006, Aug. 9, 2007, 121 Stat. 590; Pub. L. 114-329, title II, §§204(a)(1)(B)(ii), 205(a)(2)(C), title IV, §404, Jan. 6, 2017, 130 Stat. 2998, 3001, 3023.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsec. (a). Pub. L. 114-329, §404(1), substituted "not fewer than 9 members appointed by the Director, a majority of whom" for "15 members appointed by the Director, at least 10 of whom" and "National Institute of Standards and Technology" for "National Bureau of Standards".

Subsec. (h)(1). Pub. L. 114-329, §§205(a)(2)(C), 404(2), made identical amendments, striking out ", including the Program established under section 278n of this title," after "which affect the Institute".

Pub. L. 114-329, §204(a)(1)(B)(ii), struck out at end "Such report also shall comment on the programmatic planning document and updates thereto submitted to Congress by the Director under subsections (c) and (d) of section 278i of this title."

2007—Subsec. (d). Pub. L. 110-69, §3006, substituted "twice each year" for "quarterly".

Subsec. (h)(1). Pub. L. 110-69, §3005, substituted "not later than 30 days after the submittal to Congress of the President's annual budget request in each year" for "on or before January 31 in each year" and inserted at end "Such report also shall comment on the programmatic planning document and updates thereto submitted to Congress by the Director under subsections (c) and (d) of section 278i of this title."

1996—Subsec. (a). Pub. L. 104-113 substituted "15 members" for "nine members" and "at least 10" for "at least five".

1988—Pub. L. 100-418, §5131(b), amended section generally, substituting provisions of subsecs. (a) to (h) relating to Visiting Committee on Advanced Technology for provisions of former single undesignated paragraph which related to a visiting committee which was to visit bureau at least once a year and report to Secretary of Commerce upon efficiency of its scientific work and condition of its equipment.

Pub. L. 100-418, §5115(a)(1), substituted "Institute" for "bureau".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under

section 5376 of Title 5.

§278a. Repealed. Pub. L. 88–611, §4(a)(1), Oct. 2, 1964, 78 Stat. 991

Section, act Mar. 3, 1901, ch. 872, §11, as added July 22, 1950, ch. 486, §2, 64 Stat. 373; amended Aug. 3, 1956, ch. 906, §2, 70 Stat. 959; Sept. 2, 1958, Pub. L. 85–890, §2, 72 Stat. 1712, provided for acceptance of gifts and bequests. See sections 1522 and 1523 of this title.

§278b. Working Capital Fund

(a) Utilization

The Institute is authorized to utilize in the performance of its functions the Working Capital Fund established by the Act of June 29, 1950 (64 Stat. 275).

(b) Availability of Fund

The working capital of the fund shall be available for obligation and payment for any activities authorized by this chapter, and for any activities for which provision is made in the appropriations which reimburse the fund.

(c) Reimbursements

In the performance of authorized activities, the Working Capital Fund shall be available and may be reimbursed for expenses of hire of automobile, hire of consultants, and travel to meetings, to the extent that such expenses are authorized for the appropriations of the Department of Commerce.

(d) Credits

The fund may be credited with advances and reimbursements, including receipts from non-Federal sources, for services performed under the authority of section 273 of this title.

(e) "Cost" defined

As used in this chapter, the term "cost" shall be construed to include directly related expenses and appropriate charges for indirect and administrative expenses.

(f) Distribution of earnings; restoration of prior impairment

The amount of any earned net income resulting from the operation of the fund at the close of each fiscal year shall be paid into the general fund of the Treasury: *Provided*, That such earned net income may be applied to restore any prior impairment of the fund, and to ensure the availability of working capital necessary to replace equipment and inventories.

(Mar. 3, 1901, ch. 872, §12, as added Aug. 3, 1956, ch. 906, §2, 70 Stat. 959; amended Pub. L. 95–322, §2(a), July 21, 1978, 92 Stat. 395; Pub. L. 99–73, §5(a), July 29, 1985, 99 Stat. 172; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of June 29, 1950 (64 Stat. 275), referred to in subsec. (a), was the Deficiency Appropriation Act, 1950. Provisions thereof relating to Working Capital Fund are not classified to the Code.

PRIOR PROVISIONS

A prior section 12 of act Mar. 3, 1901, ch. 872, as added by act July 22, 1950, ch. 486, §2, 64 Stat. 373, related to equipment purchased by Department of Commerce to carry out investigations, prior to repeal by act Aug. 3, 1956.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards".

1985—Subsec. (f). Pub. L. 99–73 struck out "first" after "may be applied", and inserted provisions relating

to working capital for replacement of equipment and inventories.

1978—Subsec. (a). Pub. L. 95–322 struck out ", and additional amounts as from time to time may be required for the purposes of said fund are authorized to be appropriated" after "(64 Stat. 275)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–73 effective Oct. 1, 1984, see section 5(c) of Pub. L. 99–73, set out as an Effective Date note under section 275c of this title.

§278c. Acquisition of land for field sites

To the extent that funds are specifically appropriated therefor, the Secretary of Commerce is authorized to acquire land for such field sites as are necessary for the proper and efficient conduct of the activities authorized herein.

(Mar. 3, 1901, ch. 872, §13, as added Pub. L. 85–890, §1, Sept. 2, 1958, 72 Stat. 1711.)

EDITORIAL NOTES

REFERENCES IN TEXT

"Herein", referred to in text, refers to act Mar. 3, 1901, ch. 872, which is classified generally to this chapter.

PRIOR PROVISIONS

A prior section 13 of act Mar. 3, 1901, ch. 872, as added July 22, 1950, ch. 486, §2, 64 Stat. 373, related to acceptance of gifts and bequests, prior to repeal by act Aug. 3, 1956. See sections 1522 and 1523 of this title.

§278d. Construction and improvement of buildings and facilities

(a) In general

Within the limits of funds which are appropriated for the Institute, the Secretary of Commerce is authorized to undertake such construction of buildings and other facilities and to make such improvements to existing buildings, grounds, and other facilities occupied or used by the Institute as are necessary for the proper and efficient conduct of the activities authorized herein.

(b) Retention of fees

The Director is authorized to retain all building use and depreciation surcharge fees collected pursuant to OMB Circular A–25. Such fees shall be collected and credited to the Construction of Research Facilities Appropriation Account for use in maintenance and repair of the Institute's existing facilities.

(Mar. 3, 1901, ch. 872, §14, as added Pub. L. 85–890, §1, Sept. 2, 1958, 72 Stat. 1711; amended Pub. L. 92–317, §3(d), June 22, 1972, 86 Stat. 235; Pub. L. 96–461, §8, Oct. 15, 1980, 94 Stat. 2051; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–245, title I, §104(f), Feb. 14, 1992, 106 Stat. 11; Pub. L. 110–69, title III, §3014, Aug. 9, 2007, 121 Stat. 599.)

EDITORIAL NOTES

REFERENCES IN TEXT

"Herein", referred to in subsec. (a), refers to act Mar. 3, 1901, ch. 872, which is classified generally to this chapter.

AMENDMENTS

2007—Pub. L. 110–69 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102–245 substituted "herein." for "herein: *Provided*, That no improvement shall be made nor shall any building be constructed under this authority at a cost in excess of \$250,000 unless specific provision is made therefor in the appropriation concerned."

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" wherever appearing.

1980—Pub. L. 96–461 substituted "\$250,000" for "\$75,000".

1972—Pub. L. 92–317 substituted "\$75,000" for "\$40,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–461 effective Oct. 1, 1980, see section 11 of Pub. L. 96–461, set out as an Effective Date note under section 278g of this title.

FACILITIES FOR COLD NEUTRON RESEARCH

Pub. L. 101–162, title I, §104, Nov. 21, 1989, 103 Stat. 994, provided that: "Hereafter, the National Institute of Standards and Technology is authorized to accept contributions of funds, to remain available until expended, from any public or private source to construct a facility for cold neutron research on materials, notwithstanding the limitations contained in 15 U.S.C. 278d."

§278e. Functions and activities

In the performance of the functions of the Institute the Secretary of Commerce is authorized to undertake the following activities: (a) The purchase, repair, and cleaning of uniforms for guards; (b) the care, maintenance, protection, repair, and alteration of Institute buildings and other plant facilities, equipment, and property; (c) the rental of field sites and laboratory, office, and warehouse space; (d) the purchase of reprints from technical journals or other periodicals and the payment of page charges for the publication of research papers and reports in such journals; (e) the furnishing of food and shelter without repayment therefor to employees of the Government at Arctic and Antarctic stations; (f) for the conduct of observations on radio propagation phenomena in the Arctic or Antarctic regions, the appointment of employees at base rates established by the Secretary of Commerce which shall not exceed such maximum rates as may be specified from time to time in the appropriation concerned, and without regard to the civil service and classification laws and sections 5542 to 5546 of title 5; (g) the erection on leased property of specialized facilities and working and living quarters when the Secretary of Commerce determines that this will best serve the interests of the Government; and (h) the provision of transportation services for employees of the Institute between the facilities of the Institute and nearby public transportation, notwithstanding section 1344 of title 31.

(Mar. 3, 1901, ch. 872, §15, as added Pub. L. 85–890, §1, Sept. 2, 1958, 72 Stat. 1711; amended Pub. L. 92–317, §3(e), June 22, 1972, 86 Stat. 235; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 104–113, §8(2), Mar. 7, 1996, 110 Stat. 779.)

EDITORIAL NOTES

CODIFICATION

"Sections 5542 to 5546 of title 5" substituted in text for "titles II and III of the Federal Employees Pay Act of 1945" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1996—Pub. L. 104–113 struck out "and" before "(g)" and inserted before period at end "; and (h) the provision of transportation services for employees of the Institute between the facilities of the Institute and nearby public transportation, notwithstanding section 1344 of title 31".

1988—Pub. L. 100–418 substituted "functions of the Institute" for "functions of the National Bureau of Standards" and "Institute buildings" for "Bureau buildings".

1972—Pub. L. 92–317 substituted, in cl. (b), "the care, maintenance, protection, repair, and alteration of Bureau buildings and other plant facilities, equipment, and property" for "the repair and alteration of buildings and other plant facilities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

NIST CAMPUS SECURITY

Pub. L. 114–329, title I, §113, Jan. 6, 2017, 130 Stat. 2993, which authorized the Department of Commerce Office of Security to directly manage the law enforcement and site security programs of the National Institute of Standards and Technology (NIST) and required the Director of Security for NIST to provide an activities and security report to the Under Secretary for Standards and Technology and the Committee on Commerce, Science, and Transportation of the Senate and Committee on Science, Space, and Technology of the House of Representatives, was repealed by Pub. L. 117–167, div. B, title II, §10246(c), Aug. 9, 2022, 136 Stat. 1492.

§278f. Fire Research Center

(a) Establishment; programs of research; functions of Secretary; dissemination of information

There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires. The content and priorities of the research program shall be determined in consultation with the Administrator of the United States Fire Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including—

(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental processes underlying all aspects of fire. Such research shall include scientific investigations of—

- (A) the physics and chemistry of combustion processes;
- (B) the dynamics of flame ignition, flame spread, and flame extinguishment;
- (C) the composition of combustion products developed by various sources and under various environmental conditions;
- (D) the early stages of fires in buildings and other structures, structural subsystems and structural components in all other types of fires, including, but not limited to, forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires, with the aim of improving early detection capability;
- (E) the behavior of fires involving all types of buildings and other structures and their contents (including mobile homes and highrise buildings, construction materials, floor and wall coverings, coatings, furnishings, and other combustible materials), and all other types of fires, including forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires;
- (F) the unique fire hazards arising from the transportation and use, in industrial and professional practices, of combustible gases, fluids, and materials;
- (G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures;
- (H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program; and
- (I) methods, procedures, and equipment for arson prevention, detection, and investigation;

(2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including—

- (A) the biological and physiological effects of toxic substances encountered in fires;
- (B) the trauma, cardiac conditions, and other hazards resulting from exposure to fire;
- (C) the development of simple and reliable tests for determining the cause of death from fires;
- (D) improved methods of providing first aid to victims of fires;

(E) psychological and motivational characteristics of persons who engage in arson, and the prediction and cure of such behavior;

(F) the conditions of stress encountered by firefighters, the effects of such stress, and the alleviation and reduction of such conditions; and

(G) such other biological, psychological, and physiological effects of fire as have significance for purposes of control or prevention of fires; and

(3) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

The Secretary shall insure that the results and advances arising from the work of the research program are disseminated broadly. He shall encourage the incorporation, to the extent applicable and practicable, of such results and advances in building codes, fire codes, and other relevant codes, test methods, fire service operations and training, and standards. The Secretary is authorized to encourage and assist in the development and adoption of uniform codes, test methods, and standards aimed at reducing fire losses and costs of fire protection.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated an amount not to exceed \$5,650,000 for the fiscal year ending September 30, 1980, which amount includes—

(1) \$525,000 for programs which are recommended in the report submitted to the Congress by the Administrator of the United States Fire Administration pursuant to section 2220(b)(1) ¹ of this title; and

(2) \$119,000 for adjustments required by law in salaries, pay, retirement, and employee benefits.

(Mar. 3, 1901, ch. 872, §16, as added Pub. L. 93-498, §18, Oct. 29, 1974, 88 Stat. 1545; amended Pub. L. 94-411, §1(b), Sept. 13, 1976, 90 Stat. 1254; Pub. L. 95-422, §§1(b), 2(b), 3(b), Oct. 5, 1978, 92 Stat. 932, 933; Pub. L. 96-121, §3, Nov. 16, 1979, 93 Stat. 863.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2220(b)(1) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 106-503, title I, §110(a)(1)(D), Nov. 13, 2000, 114 Stat. 2302.

PRIOR PROVISIONS

A prior section 16 of act Mar. 3, 1901, as added by act Mar. 1, 1968, Pub. L. 90-259, title I, §102, 82 Stat. 35, related to fire research and safety programs, prior to repeal by act Oct. 29, 1974.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-121 substituted provisions authorizing to be appropriated an amount not to exceed \$5,650,000 for the fiscal year ending Sept. 30, 1980, for provisions authorizing appropriations not to exceed \$1,275,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed \$5,500,000 for the fiscal year ending Sept. 30, 1977, not to exceed \$6,000,000 for the fiscal year ending Sept. 30, 1978, and not to exceed \$5,600,000 for the fiscal year ending Sept. 30, 1979, and added pars. (1) and (2).

1978—Subsec. (a). Pub. L. 95-422, §§2(b), 3(b), in provisions preceding par. (1) substituted "United States Fire Administration" for "National Fire Prevention and Control Administration" and added par. (1)(I).

Subsec. (b). Pub. L. 95-422, §1(b), inserted provision authorizing appropriation of not to exceed \$5,600,000 for the fiscal year ending Sept. 30, 1979.

1976—Subsec. (b). Pub. L. 94-411 substituted provisions authorizing to be appropriated not to exceed \$1,275,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed \$5,500,000 for the fiscal year ending Sept. 30, 1977, and not to exceed \$6,000,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing to be appropriated not to exceed \$3,500,000 for the fiscal year ending June 30, 1975, and not to exceed \$4,000,000 for the fiscal year ending June 30, 1976.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

COMBINATION OF FIRE RESEARCH AND BUILDING TECHNOLOGY PROGRAMS

Pub. L. 102-245, title I, §104(g), Feb. 14, 1992, 106 Stat. 11, provided that: "The fire research and building technology programs of the Institute may be combined for administrative purposes only, and separate budget accounts for fire research and building technology shall be maintained. No later than December 31, 1992, the Secretary, acting through the Director of the Institute, shall report to Congress on the results of the combination, on efforts to preserve the integrity of the fire research and building technology programs, on the long-range basic and applied research plans of the two programs, on procedures for receiving advice on fire and earthquake research priorities from constituencies concerned with public safety, and on the relation between the combined program at the Institute and the United States Fire Administration."

NATIONAL COMMISSION ON FIRE PREVENTION AND CONTROL

Pub. L. 90-259, §§101, 103, 104, and 201-207, established the National Commission on Fire Prevention and Control, directed the commission to study and investigate measures to reduce the destructive effects of fire throughout the country, and provided that the commission cease to exist thirty days after the submission of its report which was to be made no later than two years after the commission had been organized.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11654

Ex. Ord. No. 11654, Mar. 13, 1972, 37 F.R. 5361, which established in the Department of Commerce the Federal Fire Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §19, Aug. 17, 1982, 47 F.R. 36100, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

¹ [*See References in Text note below.*](#)

§278g. International activities

(a) Financial assistance to foreign nationals

The Secretary is authorized, notwithstanding any other provision of law, to expend such sums, within the limit of appropriated funds, as the Secretary may determine desirable through direct support for activities of international organizations and foreign national metrology institutes with which the Institute cooperates to advance measurement methods, technical standards, and related basic technologies, for official representation, to host official receptions, dinners, and similar events, and to otherwise extend official courtesies, including transportation of foreign dignitaries and representatives of foreign national metrology institutes to and from the Institute, for the purpose of maintaining the standing and prestige of the Department of Commerce and the Institute, through the grant of fellowships or other appropriate form of financial or logistical assistance or support to foreign nationals not in service to the Government of the United States while they are performing scientific or engineering work at the Institute or participating in the exchange of scientific or technical information at the Institute.

(b) Foreign assistance and compensation to Institute employees

The Congress consents to the acceptance by employees of the Institute of fellowships, lectureships, or other positions for the performance of scientific or engineering activities or for the exchange of scientific or technical information, offered by a foreign government, and to the

acceptance and retention by an employee of the Institute of any form of financial or other assistance provided by a foreign government as compensation for or as a means of defraying expenses associated with the performance of scientific or engineering activities or the exchange of scientific or technical information, in any case where the acceptance of such fellowship, lectureship, or position or the acceptance and retention of such assistance is determined by the Secretary to be appropriate and consistent with the interests of the United States. For the purposes of this subsection, the definitions appearing in section 7342(a) of title 5 apply. Civil actions may be brought and penalties assessed against any employee who knowingly accepts and retains assistance from a foreign government not consented to by this subsection in the same manner as is prescribed by section 7342(h) of title 5.

(c) Prohibition on use of appropriations inapplicable

Provisions of law prohibiting the use of any part of any appropriation for the payment of compensation to any employee or officer of the Government of the United States who is not a citizen of the United States shall not apply to the payment of compensation to scientific or engineering personnel of the Institute.

(d) Recruitment and employment of resident aliens

For any scientific and engineering disciplines for which there is a shortage of suitably qualified and available United States citizens and nationals, the Secretary is authorized to recruit and employ in scientific and engineering fields at the Institute foreign nationals who have been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and who intend to become United States citizens. Employment of a person under this paragraph shall not be subject to the provisions of title 5 governing employment in the competitive service, or to any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them.

(Mar. 3, 1901, ch. 872, §17, as added Pub. L. 96–461, §9, Oct. 15, 1980, 94 Stat. 2051; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–245, title I, §104(h)(2), Feb. 14, 1992, 106 Stat. 11; Pub. L. 117–167, div. B, title II, §10246(a)(1), Aug. 9, 2022, 136 Stat. 1491.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

PRIOR PROVISIONS

A prior section 278g, act Mar. 3, 1901, ch. 872, §17, as added Mar. 1, 1968, Pub. L. 90–259, title I, §102, 82 Stat. 35, related to grants to States, local governments, other non-Federal public agencies, and non-profit institutions, reimbursement of Federal agencies, delegation of powers, advance of public moneys, cooperation of Federal agencies, and issuance of rules and regulations, prior to repeal by Pub. L. 93–498, §18, Oct. 29, 1974, 88 Stat. 1545.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–167 amended subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary is authorized, notwithstanding any other provision of law, to expend such sums, within the limit of appropriated funds, as the Secretary may deem desirable, through the grant of fellowships or any other form of financial assistance, to defray the expenses of foreign nationals not in service to the Government of the United States while they are performing scientific or engineering work at the Institute or participating in the exchange of scientific or technical information at the Institute."

1992—Subsec. (d). Pub. L. 102–245 added subsec. (d).

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 96-461, §11, Oct. 15, 1980, 94 Stat. 2052, provided that: "The effective date of sections 8 and 9 of this Act [enacting this section, amending section 278d of this title, and enacting provisions set out below] shall be October 1, 1980."

CONGRESSIONAL DECLARATION OF PURPOSE

Pub. L. 96-461, §9, Oct. 15, 1980, 94 Stat. 2051, as amended by Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, provided in part that this section was enacted "[i]n order to develop and strengthen the expertise of the National Institute of Standards and Technology in science and engineering, to enhance the Secretary's ability to maintain the Institute's programs at the forefront of worldwide developments in science and engineering, and to cooperate in international scientific activities".

§278g-1. Education and outreach

(a) In general

The Director is authorized to expend funds appropriated for activities of the Institute in any fiscal year, to support, promote, and coordinate activities and efforts to enhance public awareness and understanding of measurement sciences, standards and technology at the national measurement laboratories and otherwise in fulfillment of the mission of the Institute. The Director shall carry out activities under this subsection, including education and outreach activities to the general public, industry and diverse types of institutions of higher education, including historically Black colleges and universities, Tribal Colleges and Universities, and minority-serving institutions, and community colleges in support of the Institute's mission.

(b) Hiring

The Director, in coordination with the Director of the Office of Personnel Management, may revise the procedures the Director applies when making appointments to laboratory positions within the competitive service—

- (1) to ensure corporate memory of and expertise in the fundamental ongoing work, and on developing new capabilities in priority areas;
- (2) to maintain high overall technical competence;
- (3) to improve staff diversity;
- (4) to balance emphases on the noncore and core areas; or
- (5) to improve the ability of the Institute to compete in the marketplace for qualified personnel.

(c) Volunteers

(1) In general

The Director may establish a program to use volunteers in carrying out the programs of the Institute.

(2) Acceptance of personnel

The Director may accept, subject to regulations issued by the Office of Personnel Management, voluntary service for the Institute for such purpose if the service—

- (A) is to be without compensation; and
- (B) will not be used to displace any current employee or act as a substitute for any future full-time employee of the Institute.

(3) Federal employee status

Any individual who provides voluntary service under this subsection shall not be considered a Federal employee, except for purposes of chapter 81 of title 5 (relating to compensation for injury), and sections 2671 through 2680 of title 28 (relating to tort claims).

(d) Research fellowships

(1) In general

The Director may expend funds appropriated for activities of the Institute in any fiscal year, as the Director considers appropriate, for awards of research fellowships and other forms of financial and logistical assistance, including direct stipend awards to—

(A) students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute; and

(B) United States citizens for research and technical activities of the Institute, including programs.

(2) Selection criteria

The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Institute.

(3) Financial and logistical assistance

Notwithstanding section 1345 of title 31 or any other law to the contrary, the Director may include as a form of financial or logistical assistance under this subsection temporary housing and transportation to and from Institute facilities.

(e) Educational outreach activities

The Director may—

(1) facilitate education programs for undergraduate and graduate students, postdoctoral researchers, and academic and industry employees;

(2) sponsor summer workshops for STEM kindergarten through grade 12 teachers as appropriate;

(3) develop programs for graduate student internships and visiting faculty researchers;

(4) document publications, presentations, and interactions with visiting researchers and sponsoring interns as performance metrics for improving and continuing interactions with those individuals;

(5) facilitate laboratory tours and provide presentations for educational, industry, and community groups; and ¹

(6) conduct outreach to and develop research collaborations with historically Black colleges and universities, Tribal Colleges or Universities, and minority serving institutions, including through the recruitment of students and faculty at such institutions to participate in programs developed under paragraph (3);

(7) conduct outreach to and develop research collaborations with community colleges, including through the recruitment of students and faculty at such institutions to participate in programs developed under paragraph (3);

(8) carry out other activities to increase the participation of persons historically underrepresented in STEM in the Institute's programs; and

(9) conduct outreach to and develop collaborations with nontraditional educational organizations, including those that offer training through nonprofit associations and professional associations or professional societies, to engage persons historically underrepresented in STEM through programs developed under this subsection.

(Mar. 3, 1901, ch. 872, §18, as added Pub. L. 114–329, title III, §306(b), Jan. 6, 2017, 130 Stat. 3008; amended Pub. L. 117–167, div. B, title II, §10241, Aug. 9, 2022, 136 Stat. 1486.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 278g–1, act Mar. 3, 1901, ch. 872, §18, as added Pub. L. 99–574, §6(a), Oct. 28, 1986, 100 Stat. 3237; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–245, title I, §104(h)(1), Feb. 14, 1992, 106 Stat. 11; Pub. L. 110–69, title III, §§3008, 3013(a), Aug. 9, 2007, 121

Stat. 591, 598; Pub. L. 111–358, title IV, §§406(a), §407(b), Jan. 4, 2011, 124 Stat. 4003, 4004, related to research fellowships and other financial assistance to students at institutes of higher education, prior to repeal by Pub. L. 114–329, title III, §306(a), Jan. 6, 2017, 130 Stat. 3008.

A prior section 18 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–167, §10241(1), substituted "shall" for "may" and "diverse types of institutions of higher education, including historically Black colleges and universities, Tribal Colleges and Universities, and minority-serving institutions, and community colleges" for "academia".

Subsec. (e)(6) to (9). Pub. L. 117–167, §10241(2), added pars. (6) to (9).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS CLAUSE FOR RESEARCH FELLOWSHIPS AND OTHER FINANCIAL ASSISTANCE TO STUDENTS AT INSTITUTES OF HIGHER EDUCATION

Pub. L. 114–329, title III, §306(d)(1), Jan. 6, 2017, 130 Stat. 3010, provided that: "The repeal made by subsection (a) of this section [repealing this section] shall not affect any award of a research fellowship or other form of financial assistance made under section 18 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–1) before the date of enactment of this Act [Jan. 6, 2017]. Such award shall continue to be subject to the requirements to which such funds were subject under that section before the date of enactment of this Act."

¹ So in original. The word "and" probably should not appear.

§278g–2. Post-doctoral fellowship program

(a) In general

The Institute and the National Academy of Sciences, jointly, shall establish and conduct a post-doctoral fellowship program, subject to the availability of appropriations.

(b) Organization

The post-doctoral fellowship program shall include not less than 20 new fellows per fiscal year.

(c) Evaluations

In evaluating applications for post-doctoral fellowships under this section, the Director of the Institute and the President of the National Academy of Sciences shall give consideration to the goal of promoting the participation of individuals identified in sections 1885a and 1885b of title 42 in research areas supported by the Institute.

(Mar. 3, 1901, ch. 872, §19, as added Pub. L. 99–574, §8(a), Oct. 28, 1986, 100 Stat. 3238; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 104–113, §8(3), Mar. 7, 1996, 110 Stat. 779; Pub. L. 110–69, title III, §3015, Aug. 9, 2007, 121 Stat. 599; Pub. L. 111–358, title IV, §§406(b), 407(a), Jan. 4, 2011, 124 Stat. 4004; Pub. L. 114–329, title III, §306(c), Jan. 6, 2017, 130 Stat. 3010.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 19 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

AMENDMENTS

2017—Pub. L. 114–329 amended section generally. Prior to amendment, text read as follows: "The Institute shall establish and conduct a post-doctoral fellowship program, subject to the availability of

appropriations, which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than 120 new fellows per fiscal year. In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute."

2011—Pub. L. 111–358, §407(a), struck out ", in conjunction with the National Academy of Sciences," after "The Institute".

Pub. L. 111–358, §406(b), inserted at end "In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute."

2007—Pub. L. 110–69 substituted "nor more than 120 new fellows" for "nor more than 60 new fellows".

1996—Pub. L. 104–113 inserted ", subject to the availability of appropriations," after "post-doctoral fellowship program" and substituted "nor more than 60" for "nor more than forty".

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 99–574, §8(b), Oct. 28, 1986, 100 Stat. 3238, provided that: "The amendments made by subsection (a) [enacting this section] shall be effective October 1, 1987."

SAVINGS CLAUSE FOR POST-DOCTORAL FELLOWSHIP PROGRAM

Pub. L. 114–329, title III, §306(d)(2), Jan. 6, 2017, 130 Stat. 3010, provided that: "The amendment made by subsection (c) of this section [amending this section] shall not affect any award of a post-doctoral fellowship or other form of financial assistance made under section 19 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–2) before the date of enactment of this Act [Jan. 6, 2017]. Such awards shall continue to be subject to the requirements to which such funds were subject under that section before the date of enactment of this Act."

§278g–2a. Teacher science and technology enhancement Institute program

(a) Establishment

The Director shall establish within the Institute a teacher science and technology enhancement program to provide for professional development of mathematics and science teachers of elementary, middle, and secondary schools (as those terms are defined by the Director), including providing for the improvement of those teachers with respect to the understanding of science and the impacts of science on commerce.

(b) Areas of focus

In carrying out the program under this section, the Director shall focus on the areas of—

- (1) scientific measurements;
- (2) tests and standards development;
- (3) industrial competitiveness and quality;
- (4) manufacturing;
- (5) technology transfer; and
- (6) any other area of expertise of the Institute that the Director determines to be appropriate.

(c) Procedures and selection criteria

The Director shall develop and issue procedures and selection criteria for participants in the program. The Director shall give special consideration to an application from a teacher from a high-need school, as defined in section 1021 of title 20.

(d) Scheduling

The program under this section shall be conducted on an annual basis during the summer months, during the period of time when a majority of elementary, middle, and secondary schools have not

commenced a school year.

(e) Means of accomplishing goals

The program shall provide for teachers' participation in activities at the laboratory facilities of the Institute, or shall utilize other means of accomplishing the goals of the program as determined by the Director, which may include the Internet, video conferencing and recording, and workshops and conferences.

(Mar. 3, 1901, ch. 872, §19A, as added Pub. L. 105–309, §7, Oct. 30, 1998, 112 Stat. 2937; amended Pub. L. 111–358, title IV, §406(c), Jan. 4, 2011, 124 Stat. 4004.)

EDITORIAL NOTES

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–358 inserted at end "The Director shall give special consideration to an application from a teacher from a high-need school, as defined in section 1021 of title 20."

§278g–3. Computer standards program

(a) In general

The Institute shall—

(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3552(b)(6) of title 44);

(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems;

(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division; and

(5) identify and develop standards and guidelines for improving the cybersecurity workforce for an agency as part of the National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework (NIST Special Publication 800–181), or successor framework.

(b) Minimum requirements for standards and guidelines

The standards and guidelines required by subsection (a) shall include, at a minimum—

(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

(B) guidelines recommending the types of information and information systems to be included in each such category; and

(C) minimum information security requirements for information and information systems in each such category;

(2) a definition of and guidelines concerning detection and handling of information security incidents;

(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President; and

(4) performance standards and guidelines for high risk biometric identification systems, including facial recognition systems, accounting for various use cases, types of biometric identification systems, and relevant operational conditions.

(c) Development of standards and guidelines

In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the Government Accountability Office, and the Secretary of Homeland Security) to assure—

(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

(2) provide the public with an opportunity to comment on proposed standards and guidelines;

(3) submit such standards and guidelines to the Secretary of Commerce for promulgation under section 11331 of title 40;

(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after November 25, 2002;

(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

(d) Information security functions

The Institute shall—

(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 11331 of title 40;

(2) provide assistance to agencies regarding—

(A) compliance with the standards and guidelines developed under subsection (a);

(B) detecting and handling information security incidents; and

(C) information security policies, procedures, and practices;

(3) conduct research and analysis—

(A) to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

(B) to review and determine prevalent information security challenges and deficiencies identified by agencies or the Institute, including any challenges or deficiencies described in any of the annual reports under section 3553 or 3554 of title 44, and in any of the reports and the independent evaluations under section 3555 of that title, that may undermine the effectiveness of agency information security programs and practices; and

(C) to evaluate the effectiveness and sufficiency of, and challenges to, Federal agencies' implementation of standards and guidelines developed under this section and policies and standards promulgated under section 11331 of title 40;

(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

(6) evaluate security policies and practices developed for national security systems to assess

potential application by agencies to strengthen information security;

(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 278g–4 of this title, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Secretary of Commerce with such standards submitted to the Secretary; and

(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

(e) Intramural security research

As part of the research activities conducted in accordance with subsection (d)(3), the Institute shall, to the extent practicable and appropriate—

(1) conduct a research program to develop a unifying and standardized identity, privilege, and access control management framework for the execution of a wide variety of resource protection policies and that is amenable to implementation within a wide variety of existing and emerging computing environments;

(2) carry out research associated with improving the security of information systems and networks;

(3) carry out research associated with improving the testing, measurement, usability, and assurance of information systems and networks;

(4) carry out research associated with improving security of industrial control systems;

(5) carry out research associated with improving the security and integrity of the information technology supply chain; and

(6) carry out any additional research the Institute determines appropriate.

(f) Definitions

As used in this section—

(1) the term "agency" has the same meaning as provided in section 3502(1) of title 44;

(2) the term "information security" has the same meaning as provided in section 3552(b)(2) ¹ of such title;

(3) the term "information system" has the same meaning as provided in section 3502(8) of such title;

(4) the term "information technology" has the same meaning as provided in section 11101 of title 40; and

(5) the term "national security system" has the same meaning as provided in section 3552(b)(5) ² of such title. ³

(Mar. 3, 1901, ch. 872, §20, as added Pub. L. 100–235, §3(2), Jan. 8, 1988, 101 Stat. 1724; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 104–106, div. E, title LVI, §5607(a), Feb. 10, 1996, 110 Stat. 701; Pub. L. 105–85, div. A, title X, §1073(h)(1), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 107–296, title X, §1003, Nov. 25, 2002, 116 Stat. 2269; Pub. L. 107–305, §§8(b), 9, 10, Nov. 27, 2002, 116 Stat. 2378, 2379; Pub. L. 107–347, title III, §303, Dec. 17, 2002, 116 Stat. 2957; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 113–274, title II, §204, Dec. 18, 2014, 128 Stat. 2980; Pub. L. 113–283, §2(e)(4), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–329, title I, §104(b)(3), Jan. 6, 2017, 130 Stat. 2976; Pub. L. 116–283, div. H, title XCIV, §9402(a), Jan. 1, 2021, 134 Stat. 4810; Pub. L. 117–167, div. B, title II, §§10227, 10246(a)(2), (g), Aug. 9, 2022, 136 Stat. 1481, 1491, 1494.)

EDITORIAL NOTES

CODIFICATION

November 25, 2002, referred to in subsec. (c)(4), was in the original "the date of the enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 107–296, which enacted the text of this

section, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 20 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

AMENDMENTS

2022—Subsec. (a)(2). Pub. L. 117–167, §10246(g), substituted "section 3552(b)(6) of title 44" for "section 3552(b)(5) of title 44".

Subsec. (b)(4). Pub. L. 117–167, §10227, added par. (4).

Subsec. (c)(3). Pub. L. 117–167, §10246(a)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) required Institute to submit standards and minimum information security requirements to Director of Office of Management and Budget for promulgation under section 11331 of title 40.

Subsec. (d)(1). Pub. L. 117–167, §10246(a)(2)(B)(i), substituted "Secretary of Commerce" for "Director of the Office of Management and Budget".

Subsec. (d)(8). Pub. L. 117–167, §10246(a)(2)(B)(ii), which directed the substitution of "Secretary of Commerce with such standards submitted to the Secretary" for "Director of Management and Budget with such standards submitted to the Director", was executed by making the substitution for "Director of the Office of Management and Budget with such standards submitted to the Director" to reflect the probable intent of Congress.

2021—Subsec. (a)(5). Pub. L. 116–283 added par. (5).

2017—Subsec. (d)(3). Pub. L. 114–329 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;".

2014—Subsec. (a)(2). Pub. L. 113–283, §2(e)(4)(A), substituted "section 3552(b)(5)" for "section 3532(b)(2)".

Subsec. (e). Pub. L. 113–274, §204(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 113–283, §2(e)(4)(B), which directed amendment of subsec. (e) by substituting "section 3552(b)(2)" for "section 3532(1)" in par. (2) and "section 3552(b)(5)" for "section 3532(b)(2)" in par. (5), was executed to pars. (2) and (5), respectively, of subsec. (f), to reflect the probable intent of Congress and the redesignation of subsec. (e) as (f) by Pub. L. 113–274, §204(1). See below.

Pub. L. 113–274, §204(1), redesignated subsec. (e) as (f).

2004—Subsec. (c)(1). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

2002—Pub. L. 107–296 added text of section and struck out former text, as added by Pub. L. 107–347, which read:

"(a) IN GENERAL.—The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

"(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3542(b)(2) of title 44); and

"(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems.

"(b) MINIMUM REQUIREMENTS FOR STANDARDS AND GUIDELINES.—The standards and guidelines required by subsection (a) of this section shall include, at a minimum—

"(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

"(B) guidelines recommending the types of information and information systems to be included in each such category; and

"(C) minimum information security requirements for information and information systems in each such category;

"(2) a definition of and guidelines concerning detection and handling of information security incidents; and

"(3) guidelines developed in conjunction with the Department of Defense, including the National Security Agency, for identifying an information system as a national security system consistent with

applicable requirements for national security systems, issued in accordance with law and as directed by the President.

"(c) DEVELOPMENT OF STANDARDS AND GUIDELINES.—In developing standards and guidelines required by subsections (a) and (b) of this section, the Institute shall—

"(1) consult with other agencies and offices and the private sector (including the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

"(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

"(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Secretary of Commerce for promulgation under section 11331 of title 40—

"(A) standards, as required under subsection (b)(1)(A) of this section, no later than 12 months after December 17, 2002; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C) of this section, no later than 36 months after December 17, 2002;

"(4) issue guidelines as required under subsection (b)(1)(B) of this section, no later than 18 months after December 17, 2002;

"(5) to the maximum extent practicable, ensure that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;

"(6) to the maximum extent practicable, ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(7) to the maximum extent practicable, use flexible, performance-based standards and guidelines that permit the use of off-the-shelf commercially developed information security products.

"(d) INFORMATION SECURITY FUNCTIONS.—The Institute shall—

"(1) submit standards developed pursuant to subsection (a) of this section, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 11331 of title 40;

"(2) provide technical assistance to agencies, upon request, regarding—

"(A) compliance with the standards and guidelines developed under subsection (a) of this section;

"(B) detecting and handling information security incidents; and

"(C) information security policies, procedures, and practices;

"(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

"(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

"(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

"(6) assist the private sector, upon request, in using and applying the results of activities under this section;

"(7) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

"(8) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

"(9) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 278g–4 of this title, regarding standards and guidelines developed under subsection (a) of this section and submit such recommendations to the Secretary of Commerce with such standards submitted to the Secretary; and

"(10) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

"(e) DEFINITIONS.—As used in this section—

"(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44;

"(2) the term 'information security' has the same meaning as provided in section 3542(b)(1) of such title;

"(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

"(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40;

and

"(5) the term 'national security system' has the same meaning as provided in section 3542(b)(2) of title 44.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce \$20,000,000 for each of fiscal years 2003, 2004, 2005, 2006, and 2007 to enable the National Institute of Standards and Technology to carry out the provisions of this section."

Pub. L. 107-347 added text of section and struck out former text which read as follows:

"(a) The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for computer systems;

"(2) except as described in paragraph (3) of this subsection (relating to security standards), develop uniform standards and guidelines for Federal computer systems, except those systems excluded by section 2315 of title 10 or section 3502(9) of title 44;

"(3) have responsibility within the Federal Government for developing technical, management, physical, and administrative standards and guidelines for the cost-effective security and privacy of sensitive information in Federal computer systems except—

"(A) those systems excluded by section 2315 of title 10 or section 3502(9) of title 44; and

"(B) those systems which are protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy, the primary purpose of which standards and guidelines shall be to control loss and unauthorized modification or disclosure of sensitive information in such systems and to prevent computer-related fraud and misuse;

"(4) submit standards and guidelines developed pursuant to paragraphs (2) and (3) of this subsection, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 1441 of title 40;

"(5) develop guidelines for use by operators of Federal computer systems that contain sensitive information in training their employees in security awareness and accepted security practice, as required by section 5 of the Computer Security Act of 1987; and

"(6) develop validation procedures for, and evaluate the effectiveness of, standards and guidelines developed pursuant to paragraphs (1), (2), and (3) of this subsection through research and liaison with other government and private agencies.

"(b) In fulfilling subsection (a) of this section, the Institute is authorized—

"(1) to assist the private sector, upon request, in using and applying the results of the programs and activities under this section;

"(2) as requested, to provide to operators of Federal computer systems technical assistance in implementing the standards and guidelines promulgated pursuant to section 1441 of title 40;

"(3) to assist, as appropriate, the Office of Personnel Management in developing regulations pertaining to training, as required by section 5 of the Computer Security Act of 1987;

"(4) to perform research and to conduct studies, as needed, to determine the nature and extent of the vulnerabilities of, and to devise techniques for the cost-effective security and privacy of sensitive information in Federal computer systems; and

"(5) to coordinate closely with other agencies and offices (including, but not limited to, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, the Office of Technology Assessment, and the Office of Management and Budget)—

"(A) to assure maximum use of all existing and planned programs, materials, studies, and reports relating to computer systems security and privacy, in order to avoid unnecessary and costly duplication of effort; and

"(B) to assure, to the maximum extent feasible, that standards developed pursuant to subsection (a)(3) and (5) of this section are consistent and compatible with standards and procedures developed for the protection of information in Federal computer systems which is authorized under criteria established by Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"(c) For the purposes of—

"(1) developing standards and guidelines for the protection of sensitive information in Federal computer systems under subsections (a)(1) and (a)(3) of this section, and

"(2) performing research and conducting studies under subsection (b)(5) of this section, the Institute shall draw upon computer system technical security guidelines developed by the National Security Agency to the extent that the Institute determines that such guidelines are consistent with the

requirements for protecting sensitive information in Federal computer systems.

"(d) As used in this section—

"(1) the term 'computer system'—

"(A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

"(B) includes—

"(i) computers and computer networks;

"(ii) ancillary equipment;

"(iii) software, firmware, and similar procedures;

"(iv) services, including support services; and

"(v) related resources;

"(2) the term 'Federal computer system' means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function;

"(3) the term 'operator of a Federal computer system' means a Federal agency, contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

"(4) the term 'sensitive information' means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5 (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

"(5) the term 'Federal agency' has the meaning given such term by section 472(b) of title 40.

"(e) INTRAMURAL SECURITY RESEARCH.—As part of the research activities conducted in accordance with subsection (b)(4) of this section, the Institute shall—

"(1) conduct a research program to address emerging technologies associated with assembling a networked computer system from components while ensuring it maintains desired security properties;

"(2) carry out research associated with improving the security of real-time computing and communications systems for use in process control; and

"(3) carry out multidisciplinary, long-term, high-risk research on ways to improve the security of computer systems.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$1,060,000 for fiscal year 2003 and \$1,090,000 for fiscal year 2004 to enable the Computer System Security and Privacy Advisory Board, established by section 278g-4 of this title, to identify emerging issues, including research needs, related to computer security, privacy, and cryptography and, as appropriate, to convene public meetings on those subjects, receive presentations, and publish reports, digests, and summaries for public distribution on those subjects."

Subsec. (d)(1)(B)(i). Pub. L. 107-305, §8(b), substituted "computers and computer networks" for "computers".

Subsecs. (e), (f). Pub. L. 107-305, §§9, 10, added subsecs. (e) and (f).

1997—Subsecs. (a)(4), (b)(2). Pub. L. 105-85 made technical amendment to reference in original act which appears in text as reference to section 1441 of title 40.

1996—Subsec. (a)(2), (3)(A). Pub. L. 104-106, §5607(a)(1)(A), substituted "section 3502(9) of title 44" for "section 3502(2) of title 44".

Subsec. (a)(4). Pub. L. 104-106, §5607(a)(1)(B), substituted "section 1441 of title 40" for "section 759(d) of title 40".

Subsec. (b)(2). Pub. L. 104-106, §5607(a)(2)(A), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "to make recommendations, as appropriate, to the Administrator of General Services on policies and regulations proposed pursuant to section 1441 of title 40;"

Subsec. (b)(3). Pub. L. 104-106, §5607(a)(2)(C), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Pub. L. 104-106, §5607(a)(2)(B), substituted "section 1441 of title 40" for "section 759(d) of title 40".

Subsec. (b)(4) to (6). Pub. L. 104-106, §5607(a)(2)(C), redesignated pars. (4) to (6) as (3) to (5), respectively.

Subsec. (d)(1)(B)(v). Pub. L. 104-106, §5607(a)(3)(A), struck out "as defined by regulations issued by the Administrator for General Services pursuant to section 759 of title 40" after "related resources".

Subsec. (d)(2). Pub. L. 104-106, §5607(a)(3)(B), substituted "system" for "system—", struck out "(A)"

before "means", substituted "function;" for "function; and", and struck out subpar. (B) which read as follows: "includes automatic data processing equipment as that term is defined in section 759(a)(2) of title 40;".

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" in introductory provisions of subsecs. (a) and (b) and wherever appearing in closing provisions of subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–347 effective Dec. 17, 2002, see section 402(b) of Pub. L. 107–347, set out as a note under section 3504 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

PUBLICATION OF STANDARDS AND GUIDELINES ON CYBERSECURITY AWARENESS

Pub. L. 116–283, div. H, title XCIV, §9402(b), Jan. 1, 2021, 134 Stat. 4810, provided that: "Not later than three years after the date of the enactment of this Act [Jan. 1, 2021] and pursuant to section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), the Director of the National Institute of Standards and Technology shall publish standards and guidelines for improving cybersecurity awareness of employees and contractors of Federal agencies."

¹ *So in original. Probably should be "3552(b)(3)".*

² *So in original. Probably should be "3552(b)(6)".*

³ *So in original. "Such title" probably means title 44.*

§278g–3a. Definitions

In this Act:

(1) Agency

The term "agency" has the meaning given that term in section 3502 of title 44.

(2) Director of OMB

The term "Director of OMB" means the Director of the Office of Management and Budget.

(3) Director of the Institute

The term "Director of the Institute" means the Director of the National Institute of Standards and Technology.

(4) Information system

The term "information system" has the meaning given that term in section 3502 of title 44.

(5) National security system

The term "national security system" has the meaning given that term in section 3552(b)(6) of title 44.

(6) Operational technology

The term "operational technology" means hardware and software that detects or causes a change through the direct monitoring or control of physical devices, processes, and events in the enterprise.

(7) Secretary

The term "Secretary" means the Secretary of Homeland Security.

(8) Security vulnerability

The term "security vulnerability" has the meaning given that term in section 650 of title 6. (Pub. L. 116–207, §3, Dec. 4, 2020, 134 Stat. 1001; Pub. L. 117–263, div. G, title LXXI, §7143(d)(8), Dec. 23, 2022, 136 Stat. 3664.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 116–207, Dec. 4, 2020, 134 Stat. 1001, known as the Internet of Things Cybersecurity Improvement Act of 2020 and also as the IoT Cybersecurity Improvement Act of 2020, which enacted this section and sections 278g–3b to 278g–3e of this title and provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 271 of this title and Tables.

CODIFICATION

Section was enacted as part of the Internet of Things Cybersecurity Improvement Act of 2020, also known as the IoT Cybersecurity Improvement Act of 2020, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

2022—Par. (8). Pub. L. 117–263 substituted "section 650 of title 6" for "section 1501(17) of title 6".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SENSE OF CONGRESS

Pub. L. 116–207, §2, Dec. 4, 2020, 134 Stat. 1001, provided that: "It is the sense of Congress that—

"(1) ensuring the highest level of cybersecurity at agencies in the executive branch is the responsibility of the President, followed by the Director of the Office of Management and Budget, the Secretary of Homeland Security, and the head of each such agency;

"(2) this responsibility is to be carried out by working collaboratively within and among agencies in the executive branch, industry, and academia;

"(3) the strength of the cybersecurity of the Federal Government and the positive benefits of digital technology transformation depend on proactively addressing cybersecurity throughout the acquisition and operation of Internet of Things devices by the Federal Government; and

"(4) consistent with the second draft National Institute for Standards and Technology Interagency or Internal Report 8259 titled 'Recommendations for IoT Device Manufacturers: Foundational Activities and Core Device Cybersecurity Capability Baseline', published in January 2020, Internet of Things devices are devices that—

"(A) have at least one transducer (sensor or actuator) for interacting directly with the physical world, have at least one network interface, and are not conventional Information Technology devices, such as smartphones and laptops, for which the identification and implementation of cybersecurity features is already well understood; and

"(B) can function on their own and are not only able to function when acting as a component of another device, such as a processor."

§278g–3b. Security standards and guidelines for agencies on use and management of Internet of Things devices

(a) National Institute of Standards and Technology development of standards and guidelines for use of Internet of Things devices by agencies

(1) In general

Not later than 90 days after December 4, 2020, the Director of the Institute shall develop and

publish under section 278g–3 of this title standards and guidelines for the Federal Government on the appropriate use and management by agencies of Internet of Things devices owned or controlled by an agency and connected to information systems owned or controlled by an agency, including minimum information security requirements for managing cybersecurity risks associated with such devices.

(2) Consistency with ongoing efforts

The Director of the Institute shall ensure that the standards and guidelines developed under paragraph (1) are consistent with the efforts of the National Institute of Standards and Technology in effect on December 4, 2020—

(A) regarding—

- (i) examples of possible security vulnerabilities of Internet of Things devices; and
 - (ii) considerations for managing the security vulnerabilities of Internet of Things devices;
- and

(B) with respect to the following considerations for Internet of Things devices:

- (i) Secure Development.
- (ii) Identity management.
- (iii) Patching.
- (iv) Configuration management.

(3) Considering relevant standards

In developing the standards and guidelines under paragraph (1), the Director of the Institute shall consider relevant standards, guidelines, and best practices developed by the private sector, agencies, and public-private partnerships.

(b) Review of agency information security policies and principles

(1) Requirement

Not later than 180 days after the date on which the Director of the Institute completes the development of the standards and guidelines required under subsection (a), the Director of OMB shall review agency information security policies and principles on the basis of the standards and guidelines published under subsection (a) pertaining to Internet of Things devices owned or controlled by agencies (excluding agency information security policies and principles pertaining to Internet of Things of devices owned or controlled by agencies that are or comprise a national security system) for consistency with the standards and guidelines submitted under subsection (a) and issue such policies and principles as may be necessary to ensure those policies and principles are consistent with such standards and guidelines.

(2) Review

In reviewing agency information security policies and principles under paragraph (1) and issuing policies and principles under such paragraph, as may be necessary, the Director of OMB shall—

- (A) consult with the Director of the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security; and
- (B) ensure such policies and principles are consistent with the information security requirements under subchapter II of chapter 35 of title 44.

(3) National security systems

Any policy or principle issued by the Director of OMB under paragraph (1) shall not apply to national security systems.

(c) Quinquennial review and revision

(1) Review and revision of NIST standards and guidelines

Not later than 5 years after the date on which the Director of the Institute publishes the standards and guidelines under subsection (a), and not less frequently than once every 5 years

thereafter, the Director of the Institute, shall—

- (A) review such standards and guidelines; and
- (B) revise such standards and guidelines as appropriate.

(2) Updated OMB policies and principles for agencies

Not later than 180 days after the Director of the Institute makes a revision pursuant to paragraph (1), the Director of OMB, in consultation with the Director of the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security, shall update any policy or principle issued under subsection (b)(1) as necessary to ensure those policies and principles are consistent with the review and any revision under paragraph (1) under this subsection and paragraphs (2) and (3) of subsection (b).

(d) Revision of Federal Acquisition Regulation

The Federal Acquisition Regulation shall be revised as necessary to implement any standards and guidelines promulgated in this section.

(Pub. L. 116–207, §4, Dec. 4, 2020, 134 Stat. 1002.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Internet of Things Cybersecurity Improvement Act of 2020, also known as the IoT Cybersecurity Improvement Act of 2020, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 278g–3a of this title.

§278g–3c. Guidelines on the disclosure process for security vulnerabilities relating to information systems, including Internet of Things devices

(a) In general

Not later than 180 days after December 4, 2020, the Director of the Institute, in consultation with such cybersecurity researchers and private sector industry experts as the Director considers appropriate, and in consultation with the Secretary, shall develop and publish under section 278g–3 of this title guidelines—

- (1) for the reporting, coordinating, publishing, and receiving of information about—
 - (A) a security vulnerability relating to information systems owned or controlled by an agency (including Internet of Things devices owned or controlled by an agency); and
 - (B) the resolution of such security vulnerability; and

(2) for a contractor providing to an agency an information system (including an Internet of Things device) and any subcontractor thereof at any tier providing such information system to such contractor, on—

- (A) receiving information about a potential security vulnerability relating to the information system; and
- (B) disseminating information about the resolution of a security vulnerability relating to the information system.

(b) Elements

The guidelines published under subsection (a) shall—

- (1) to the maximum extent practicable, be aligned with industry best practices and Standards

29147 and 30111 of the International Standards Organization (or any successor standard) or any other appropriate, relevant, and widely-used standard;

(2) incorporate guidelines on—

(A) receiving information about a potential security vulnerability relating to an information system owned or controlled by an agency (including an Internet of Things device); and

(B) disseminating information about the resolution of a security vulnerability relating to an information system owned or controlled by an agency (including an Internet of Things device); and

(3) be consistent with the policies and procedures produced under section 659(m) of title 6.

(c) Information items

The guidelines published under subsection (a) shall include example content, on the information items that should be reported, coordinated, published, or received pursuant to this section by a contractor, or any subcontractor thereof at any tier, providing an information system (including Internet of Things device) to the Federal Government.

(d) Oversight

The Director of OMB shall oversee the implementation of the guidelines published under subsection (a).

(e) Operational and technical assistance

The Secretary, in consultation with the Director of OMB, shall administer the implementation of the guidelines published under subsection (a) and provide operational and technical assistance in implementing such guidelines.

(Pub. L. 116–207, §5, Dec. 4, 2020, 134 Stat. 1004.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Internet of Things Cybersecurity Improvement Act of 2020, also known as the IoT Cybersecurity Improvement Act of 2020, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 278g–3a of this title.

§278g–3d. Implementation of coordinated disclosure of security vulnerabilities relating to agency information systems, including Internet of Things devices

(a) Agency guidelines required

Not later than 2 years after December 4, 2020, the Director of OMB, in consultation with the Secretary, shall develop and oversee the implementation of policies, principles, standards, or guidelines as may be necessary to address security vulnerabilities of information systems (including Internet of Things devices).

(b) Operational and technical assistance

Consistent with section 3553(b) of title 44, the Secretary, in consultation with the Director of OMB, shall provide operational and technical assistance to agencies on reporting, coordinating, publishing, and receiving information about security vulnerabilities of information systems (including Internet of Things devices).

(c) Consistency with guidelines from National Institute of Standards and Technology

The Secretary shall ensure that the assistance provided under subsection (b) is consistent with applicable standards and publications developed by the Director of the Institute.

(d) Revision of Federal Acquisition Regulation

The Federal Acquisition Regulation shall be revised as necessary to implement the provisions under this section.

(Pub. L. 116–207, §6, Dec. 4, 2020, 134 Stat. 1005.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Internet of Things Cybersecurity Improvement Act of 2020, also known as the IoT Cybersecurity Improvement Act of 2020, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 278g–3a of this title.

§278g–3e. Contractor compliance with coordinated disclosure of security vulnerabilities relating to agency Internet of Things devices

(a) Prohibition on procurement and use

(1) In general

The head of an agency is prohibited from procuring or obtaining, renewing a contract to procure or obtain, or using an Internet of Things device, if the Chief Information Officer of that agency determines during a review required by section 11319(b)(1)(C) of title 40 of a contract for such device that the use of such device prevents compliance with the standards and guidelines developed under section 278g–3b of this title or the guidelines published under section 278g–3c of this title with respect to such device.

(2) Simplified acquisition threshold

Notwithstanding section 1905 of title 41, the requirements under paragraph (1) shall apply to a contract or subcontract in amounts not greater than the simplified acquisition threshold.

(b) Waiver

(1) Authority

The head of an agency may waive the prohibition under subsection (a)(1) with respect to an Internet of Things device if the Chief Information Officer of that agency determines that—

- (A) the waiver is necessary in the interest of national security;
- (B) procuring, obtaining, or using such device is necessary for research purposes; or
- (C) such device is secured using alternative and effective methods appropriate to the function of such device.

(2) Agency process

The Director of OMB shall establish a standardized process for the Chief Information Officer of each agency to follow in determining whether the waiver under paragraph (1) may be granted.

(c) Reports to Congress

(1) Report

Every 2 years during the 6-year period beginning on December 4, 2020, the Comptroller General of the United States shall submit to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report—

(A) on the effectiveness of the process established under subsection (b)(2);

(B) that contains recommended best practices for the procurement of Internet of Things devices; and

(C) that lists—

(i) the number and type of each Internet of Things device for which a waiver under subsection (b)(1) was granted during the 2-year period prior to the submission of the report; and

(ii) the legal authority under which each such waiver was granted, such as whether the waiver was granted pursuant to subparagraph (A), (B), or (C) of such subsection.

(2) Classification of report

Each report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex that contains the information described under paragraph (1)(C).

(d) Effective date

The prohibition under subsection (a)(1) shall take effect 2 years after December 4, 2020.

(Pub. L. 116–207, §7, Dec. 4, 2020, 134 Stat. 1005.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Internet of Things Cybersecurity Improvement Act of 2020, also known as the IoT Cybersecurity Improvement Act of 2020, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

DEFINITIONS

For definitions of terms used in this section, see section 278g–3a of this title.

§278g–4. Information Security and Privacy Advisory Board

(a) Establishment and composition

There is hereby established a ¹ Information Security and Privacy Advisory Board within the Department of Commerce. The Secretary of Commerce shall appoint the chairman of the Board. The Board shall be composed of twelve additional members appointed by the Secretary of Commerce as follows:

(1) four members from outside the Federal Government who are eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology; and

(3) four members from the Federal Government who have information system management

experience, including experience in information security and privacy, at least one of whom shall be from the National Security Agency.

(b) Duties

The duties of the Board shall be—

(1) to identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy;

(2) to advise the Institute, the Secretary of Homeland Security, and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 278g–3 of this title; and

(3) to report annually its findings to the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

(c) Term of office

The term of office of each member of the Board shall be four years, except that—

(1) of the initial members, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years, and three shall be appointed for terms of four years; and

(2) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

(d) Quorum

The Board shall not act in the absence of a quorum, which shall consist of seven members.

(e) Allowance for travel expenses

Members of the Board, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise performing duties at the request of the Board Chairman while away from their homes or a regular place of business, may be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5.

(f) Meetings

The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.

(g) Staff services and utilization of Federal personnel

To provide the staff services necessary to assist the Board in carrying out its functions, the Board may utilize personnel from the Institute or any other agency of the Federal Government with the consent of the head of the agency.

(h) Definitions

As used in this section, the terms "information system" and "information technology" have the meanings given in section 278g–3 of this title.

(Mar. 3, 1901, ch. 872, §21, as added Pub. L. 100–235, §3(2), Jan. 8, 1988, 101 Stat. 1727; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 107–296, title X, §1004, Nov. 25, 2002, 116 Stat. 2271; Pub. L. 107–347, title III, §304, Dec. 17, 2002, 116 Stat. 2959; Pub. L. 113–283, §2(f)(2), Dec. 18, 2014, 128 Stat. 3087.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (b)(2). Pub. L. 113–283, §2(f)(2)(A), inserted ", the Secretary of Homeland Security," after "the Institute".

Subsec. (b)(3). Pub. L. 113–283, §2(f)(2)(B), inserted "the Secretary of Homeland Security," after "the Secretary of Commerce,".

2002—Subsec. (a). Pub. L. 107–296, §1004(1), and Pub. L. 107–347, §304(1), amended subsec. (a) identically, substituting "Information Security and Privacy Advisory Board" for "Computer System Security and Privacy Advisory Board" in introductory provisions.

Subsec. (a)(1). Pub. L. 107–296, §1004(2), and Pub. L. 107–347, §304(2), amended par. (1) identically, substituting "information technology" for "computer or telecommunications".

Subsec. (a)(2). Pub. L. 107–296, §1004(3), and Pub. L. 107–347, §304(3), amended par. (2) identically, substituting "information technology" for "computer or telecommunications technology" and for "computer or telecommunications equipment".

Subsec. (a)(3). Pub. L. 107–296, §1004(4), and Pub. L. 107–347, §304(4), amended par. (3) identically, substituting "information system" for "computer systems" and "information security" for "computer systems security".

Subsec. (b)(1). Pub. L. 107–296, §1004(5), and Pub. L. 107–347, §304(5), amended par. (1) identically, substituting "information security" for "computer systems security".

Subsec. (b)(2). Pub. L. 107–347, §304(6), added par. (2) and struck out former par. (2) which read as follows: "to advise the Institute and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems; and".

Pub. L. 107–296, §1004(6), added par. (2) and struck out former par. (2), as added by Pub. L. 107–347, which read as follows: "to advise the Institute, the Secretary of Commerce, and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 278g–3 of this title; and".

Subsec. (b)(3). Pub. L. 107–296, §1004(7), and Pub. L. 107–347, §304(7), amended par. (3) identically, inserting "annually" after "report".

Subsecs. (f), (g). Pub. L. 107–296, §1004(8), (9), and Pub. L. 107–347, §304(8), (9), amended section identically, adding subsec. (f) and redesignating former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 107–296, §1004(10), and Pub. L. 107–347, §304(10), amended section identically, adding subsec. (h) and striking out former subsec. (h) which read as follows: "As used in this section, the terms 'computer system' and 'Federal computer system' have the meanings given in section 278g–3 of this title."

Pub. L. 107–296, §1004(9), and Pub. L. 107–347, §304(9), amended section identically, redesignating subsec. (g) as (h).

1988—Subsec. (b)(2). Pub. L. 100–418, which directed that this chapter be amended by substituting "Institute" for "National Bureau of Standards", "Bureau", or "bureau", wherever appearing, was executed to par. (2) by substituting "Institute" for "Bureau of Standards", to reflect the probable intent of Congress.

Subsec. (f). Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–347 effective Dec. 17, 2002, see section 402(b) of Pub. L. 107–347, set out as a note under section 3504 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

¹ *So in original. Probably should be "an".*

§278g–5. Enterprise integration initiative

(a) Establishment

The Director shall establish an initiative for advancing enterprise integration within the United States. In carrying out this section, the Director shall involve, as appropriate, the various units of the National Institute of Standards and Technology, including the National Institute of Standards and Technology laboratories (including the Building and Fire Research Laboratory), the Hollings Manufacturing Extension Partnership program established under sections 278k and 278l of this title, and the Malcolm Baldrige National Quality Program. This initiative shall build upon ongoing efforts of the National Institute of Standards and Technology and of the private sector, shall involve consortia that include government and industry, and shall address the enterprise integration needs of each United States major manufacturing industry at the earliest possible date.

(b) Assessment

For each major manufacturing industry, the Director may work with industry, trade associations, professional societies, and others as appropriate, to identify enterprise integration standardization and implementation activities underway in the United States and abroad that affect that industry and to assess the current state of enterprise integration within that industry. The Director may assist in the development of roadmaps to permit supply chains within the industry to operate as an integrated electronic enterprise. The roadmaps shall be based on voluntary consensus standards.

(c) Authorized activities

In order to carry out this Act, the Director may work with industry, trade associations, professional societies, and others as appropriate—

- (1) to raise awareness in the United States, including awareness by businesses that are majority owned by women, minorities, or both, of enterprise integration activities in the United States and abroad, including by the convening of conferences;
- (2) on the development of enterprise integration roadmaps;
- (3) to support the development, testing, promulgation, integration, adoption, and upgrading of standards related to enterprise integration including application protocols; and
- (4) to provide technical assistance and, if necessary, financial support to small- and medium-sized businesses that set up pilot projects in enterprise integration.

(d) Manufacturing Extension Program

The Director shall ensure that the Manufacturing Extension Program is prepared to advise small- and medium-sized businesses on how to acquire the expertise, equipment, and training necessary to participate fully in supply chains using enterprise integration.

(Pub. L. 107–277, §3, Nov. 5, 2002, 116 Stat. 1936; Pub. L. 113–188, title II, §201(b), Nov. 26, 2014, 128 Stat. 2018; Pub. L. 114–329, title V, §501(e)(2), Jan. 6, 2017, 130 Stat. 3033.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 107–277, Nov. 5, 2002, 116 Stat. 1936, known as the Enterprise Integration Act of 2002, which enacted this section and provisions set out as a note under this section. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Enterprise Integration Act of 2002, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

2017—Subsec. (a). Pub. L. 114–329 inserted "Hollings" before "Manufacturing Extension Partnership".

2014—Subsecs. (c) to (e). Pub. L. 113–188 redesignated subsecs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (c) which required annual reports on the National Institute of Standards and Technology's activities under subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ENTERPRISE INTEGRATION

Pub. L. 107-277, Nov. 5, 2002, 116 Stat. 1936, provided that:

"SECTION. 1. SHORT TITLE.

"This Act [enacting this section and this note] may be cited as the 'Enterprise Integration Act of 2002'.

"SEC. 2. FINDINGS.

"The Congress makes the following findings:

"(1) Over 90 percent of United States companies engaged in manufacturing are small- and medium-sized businesses.

"(2) Most of these manufacturers produce goods for assemblage into products of large companies.

"(3) The emergence of the World Wide Web and the promulgation of international standards for product data exchange greatly accelerated the movement toward electronically integrated supply chains during the last half of the 1990's.

"(4) European and Asian countries are investing heavily in electronic enterprise standards development, and in preparing their smaller manufacturers to do business in the new environment. European efforts are well advanced in the aerospace, automotive, and shipbuilding industries and are beginning in other industries including home building, furniture manufacturing, textiles, and apparel. This investment could give overseas companies a major competitive advantage.

"(5) The National Institute of Standards and Technology, because of the electronic commerce expertise in its laboratories and quality program, its long history of working cooperatively with manufacturers, and the nationwide reach of its manufacturing extension program, is in a unique position to help United States large and smaller manufacturers alike in their responses to this challenge.

"(6) It is, therefore, in the national interest for the National Institute of Standards and Technology to accelerate its efforts in helping industry develop standards and enterprise integration processes that are necessary to increase efficiency and lower costs.

"SEC. 3. ENTERPRISE INTEGRATION INITIATIVE.

[Enacted this section.]

"SEC. 4. DEFINITIONS.

"For purposes of this Act—

"(1) the term 'automotive' means land-based engine-powered vehicles including automobiles, trucks, busses, trains, defense vehicles, farm equipment, and motorcycles;

"(2) the term 'Director' means the Director of the National Institute of Standards and Technology;

"(3) the term 'enterprise integration' means the electronic linkage of manufacturers, assemblers, suppliers, and customers to enable the electronic exchange of product, manufacturing, and other business data among all partners in a product supply chain, and such term includes related application protocols and other related standards;

"(4) the term 'major manufacturing industry' includes the aerospace, automotive, electronics, shipbuilding, construction, home building, furniture, textile, and apparel industries and such other industries as the Director designates; and

"(5) the term 'roadmap' means an assessment of manufacturing interoperability requirements developed by an industry describing that industry's goals related to enterprise integration, the knowledge and standards including application protocols necessary to achieve those goals, and the necessary steps, timetable, and assignment of responsibilities for acquiring the knowledge and developing the standards and protocols.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Director to carry out functions under this Act—

"(1) \$2,000,000 for fiscal year 2002;

"(2) \$10,000,000 for fiscal year 2003;

"(3) \$15,000,000 for fiscal year 2004; and

"(4) \$20,000,000 for fiscal year 2005."

§278h. Research program on security of computer systems

(a) Establishment

The Director shall establish a program of assistance to institutions of higher education that enter

into partnerships with for-profit entities to support research to improve the security of computer systems. The partnerships may also include government laboratories and nonprofit research institutions. The program shall—

- (1) include multidisciplinary, long-term research;
- (2) include research directed toward addressing needs identified through the activities of the Computer System Security ¹ and Privacy Advisory Board under section 278g–3(f) ² of this title; and
- (3) promote the development of a robust research community working at the leading edge of knowledge in subject areas relevant to the security of computer systems by providing support for graduate students, post-doctoral researchers, and senior researchers.

(b) Fellowships

(1) Post-doctoral research fellowships

The Director is authorized to establish a program to award post-doctoral research fellowships to individuals who are citizens, nationals, or lawfully admitted permanent resident aliens of the United States and are seeking research positions at institutions, including the Institute, engaged in research activities related to the security of computer systems, including the research areas described in section 7403(a)(1) of this title.

(2) Senior research fellowships

The Director is authorized to establish a program to award senior research fellowships to individuals seeking research positions at institutions, including the Institute, engaged in research activities related to the security of computer systems, including the research areas described in section 7403(a)(1) of this title. Senior research fellowships shall be made available for established researchers at institutions of higher education who seek to change research fields and pursue studies related to the security of computer systems.

(3) Eligibility

(A) In general

To be eligible for an award under this subsection, an individual shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(B) Stipends

Under this subsection, the Director is authorized to provide stipends for post-doctoral research fellowships at the level of the Institute's Post Doctoral Research Fellowship Program and senior research fellowships at levels consistent with support for a faculty member in a sabbatical position.

(c) Awards; applications

(1) In general

The Director is authorized to award grants or cooperative agreements to institutions of higher education to carry out the program established under subsection (a). No funds made available under this section shall be made available directly to any for-profit partners.

(2) Eligibility

To be eligible for an award under this section, an institution of higher education shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

- (A) the number of graduate students anticipated to participate in the research project and the level of support to be provided to each;
- (B) the number of post-doctoral research positions included under the research project and the level of support to be provided to each;
- (C) the number of individuals, if any, intending to change research fields and pursue studies

related to the security of computer systems to be included under the research project and the level of support to be provided to each; and

(D) how the for-profit entities, nonprofit research institutions, and any other partners will participate in developing and carrying out the research and education agenda of the partnership.

(d) Program operation

(1) Management

The program established under subsection (a) shall be managed by individuals who shall have both expertise in research related to the security of computer systems and knowledge of the vulnerabilities of existing computer systems. The Director shall designate such individuals as program managers.

(2) Managers may be employees

Program managers designated under paragraph (1) may be new or existing employees of the Institute or individuals on assignment at the Institute under the Intergovernmental Personnel Act of 1970 [42 U.S.C. 4701 et seq.], except that individuals on assignment at the Institute under the Intergovernmental Personnel Act of 1970 shall not directly manage such employees.

(3) Manager responsibility

Program managers designated under paragraph (1) shall be responsible for—

(A) establishing and publicizing the broad research goals for the program;

(B) soliciting applications for specific research projects to address the goals developed under subparagraph (A);

(C) selecting research projects for support under the program from among applications submitted to the Institute, following consideration of—

(i) the novelty and scientific and technical merit of the proposed projects;

(ii) the demonstrated capabilities of the individual or individuals submitting the applications to successfully carry out the proposed research;

(iii) the impact the proposed projects will have on increasing the number of computer security researchers;

(iv) the nature of the participation by for-profit entities and the extent to which the proposed projects address the concerns of industry; and

(v) other criteria determined by the Director, based on information specified for inclusion in applications under subsection (c); and

(D) monitoring the progress of research projects supported under the program.

(4) Reports

The Director shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science annually on the use and responsibility of individuals on assignment at the Institute under the Intergovernmental Personnel Act of 1970 [42 U.S.C. 4701 et seq.] who are performing duties under subsection (d).

(e) Review of program

(1) Periodic review

The Director shall periodically review the portfolio of research awards monitored by each program manager designated in accordance with subsection (d). In conducting those reviews, the Director shall seek the advice of the Computer System Security ¹ and Privacy Advisory Board, established under section 278g–4 of this title, on the appropriateness of the research goals and on the quality and utility of research projects managed by program managers in accordance with subsection (d).

(2) Comprehensive 5-year review

The Director shall also contract with the National Research Council for a comprehensive review of the program established under subsection (a) during the 5th year of the program. Such review

shall include an assessment of the scientific quality of the research conducted, the relevance of the research results obtained to the goals of the program established under subsection (d)(3)(A), and the progress of the program in promoting the development of a substantial academic research community working at the leading edge of knowledge in the field. The Director shall submit to Congress a report on the results of the review under this paragraph no later than 6 years after the initiation of the program.

(f) Definitions

In this section:

(1) Computer system

The term "computer system" has the meaning given that term in section 278g–3(d)(1) ² of this title.

(2) Institution of higher education

The term "institution of higher education" has the meaning given that term in section 1001(a) of title 20.

(Mar. 3, 1901, ch. 872, §22, as added Pub. L. 107–305, §8(a)(2), Nov. 27, 2002, 116 Stat. 2375.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 278g–3 of this title, referred to in subsecs. (a)(2) and (f)(1), was amended generally by Pub. L. 107–296, title X, §1003, Nov. 25, 2002, 116 Stat. 2269, and, as so amended, did not contain a subsec. (d) defining "computer system" or a subsec. (f). A later amendment by Pub. L. 113–274, title II, §204(1), Dec. 18, 2014, 128 Stat. 2980, redesignated subsec. (e) of section 278g–3 of this title, relating to definitions, as subsec. (f).

The Intergovernmental Personnel Act of 1970, referred to in subsec. (d)(2), (4), is Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, which enacted sections 3371 to 3376 of Title 5, Government Organization and Employees, and chapter 62 (§4701 et seq.) of Title 42, The Public Health and Welfare, amended section 1304 of Title 5 and section 246 of Title 42, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 22 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

¹ *So in original. Probably should be "Information Security".*

² *See References in Text note below.*

§278h–1. Standards for artificial intelligence

(a) Mission

The Institute shall—

- (1) advance collaborative frameworks, standards, guidelines, and associated methods and techniques for artificial intelligence;
- (2) support the development of a risk-mitigation framework for deploying artificial intelligence systems;
- (3) support the development of technical standards and guidelines that promote trustworthy artificial intelligence systems; and
- (4) support the development of technical standards and guidelines by which to test for bias in artificial intelligence training data and applications.

(b) Supporting activities

The Director of the National Institute of Standards and Technology may—

- (1) support measurement research and development of best practices and voluntary standards for trustworthy artificial intelligence systems, which may include—
 - (A) privacy and security, including for datasets used to train or test artificial intelligence systems and software and hardware used in artificial intelligence systems;
 - (B) advanced computer chips and hardware designed for artificial intelligence systems;
 - (C) data management and techniques to increase the usability of data, including strategies to systematically clean, label, and standardize data into forms useful for training artificial intelligence systems and the use of common, open licenses;
 - (D) safety and robustness of artificial intelligence systems, including assurance, verification, validation, security, control, and the ability for artificial intelligence systems to withstand unexpected inputs and adversarial attacks;
 - (E) auditing mechanisms and benchmarks for accuracy, transparency, verifiability, and safety assurance for artificial intelligence systems;
 - (F) applications of machine learning and artificial intelligence systems to improve other scientific fields and engineering;
 - (G) model documentation, including performance metrics and constraints, measures of fairness, training and testing processes, and results;
 - (H) system documentation, including connections and dependences within and between systems, and complications that may arise from such connections; and
 - (I) all other areas deemed by the Director to be critical to the development and deployment of trustworthy artificial intelligence;
- (2) produce curated, standardized, representative, high-value, secure, aggregate, and privacy protected data sets for artificial intelligence research, development, and use;
- (3) support one or more institutes as described in section 9431(b) of this title for the purpose of advancing measurement science, voluntary consensus standards, and guidelines for trustworthy artificial intelligence systems;
- (4) support and strategically engage in the development of voluntary consensus standards, including international standards, through open, transparent, and consensus-based processes; and
- (5) enter into and perform such contracts, including cooperative research and development arrangements and grants and cooperative agreements or other transactions, as may be necessary in the conduct of the work of the National Institute of Standards and Technology and on such terms as the Director considers appropriate, in furtherance of the purposes of this division.¹

(c) Risk management framework

Not later than 2 years after January 1, 2021, the Director shall work to develop, and periodically update, in collaboration with other public and private sector organizations, including the National Science Foundation and the Department of Energy, a voluntary risk management framework for trustworthy artificial intelligence systems. The framework shall—

- (1) identify and provide standards, guidelines, best practices, methodologies, procedures and processes for—
 - (A) developing trustworthy artificial intelligence systems;

- (B) assessing the trustworthiness of artificial intelligence systems; and
- (C) mitigating risks from artificial intelligence systems;

(2) establish common definitions and characterizations for aspects of trustworthiness, including explainability, transparency, safety, privacy, security, robustness, fairness, bias, ethics, validation, verification, interpretability, and other properties related to artificial intelligence systems that are common across all sectors;

(3) provide case studies of framework implementation;

(4) align with international standards, as appropriate;

(5) incorporate voluntary consensus standards and industry best practices; and

(6) not prescribe or otherwise require the use of specific information or communications technology products or services.

(d) Participation in standard setting organizations

(1) Requirement

The Institute shall participate in the development of standards and specifications for artificial intelligence.

(2) Purpose

The purpose of this participation shall be to ensure—

(A) that standards promote artificial intelligence systems that are trustworthy; and

(B) that standards relating to artificial intelligence reflect the state of technology and are fit-for-purpose and developed in transparent and consensus-based processes that are open to all stakeholders.

(e) Data sharing best practices

Not later than 1 year after January 1, 2021, the Director shall, in collaboration with other public and private sector organizations, develop guidance to facilitate the creation of voluntary data sharing arrangements between industry, federally funded research centers, and Federal agencies for the purpose of advancing artificial intelligence research and technologies, including options for partnership models between government entities, industry, universities, and nonprofits that incentivize each party to share the data they collected.

(f) Best practices for documentation of data sets

Not later than 1 year after January 1, 2021, the Director shall, in collaboration with other public and private sector organizations, develop best practices for datasets used to train artificial intelligence systems, including—

(1) standards for metadata that describe the properties of datasets, including—

(A) the origins of the data;

(B) the intent behind the creation of the data;

(C) authorized uses of the data;

(D) descriptive characteristics of the data, including what populations are included and excluded from the datasets; and

(E) any other properties as determined by the Director; and

(2) standards for privacy and security of datasets with human characteristics.

(g) Testbeds

In coordination with other Federal agencies as appropriate, the private sector, and institutions of higher education (as such term is defined in section 1001 of title 20), the Director may establish testbeds, including in virtual environments, to support the development of robust and trustworthy artificial intelligence and machine learning systems, including testbeds that examine the vulnerabilities and conditions that may lead to failure in, malfunction of, or attacks on such systems.

(h) Authorization of appropriations

There are authorized to be appropriated to the National Institute of Standards and Technology to carry out this section—

- (1) \$64,000,000 for fiscal year 2021;
- (2) \$70,400,000 for fiscal year 2022;
- (3) \$77,440,000 for fiscal year 2023;
- (4) \$85,180,000 for fiscal year 2024; and
- (5) \$93,700,000 for fiscal year 2025.

(Mar. 3, 1901, ch. 872, §22A, as added Pub. L. 116–283, div. E, title LIII, §5301, Jan. 1, 2021, 134 Stat. 4536; amended Pub. L. 117–167, div. B, title II, §10232(b), Aug. 9, 2022, 136 Stat. 1484.)

EDITORIAL NOTES

REFERENCES IN TEXT

This division, referred to in subsec. (b)(5), probably means div. E of Pub. L. 116–283, Jan. 1, 2021, 134 Stat. 4523, which is classified principally to chapter 119 of this title.

AMENDMENTS

2022—Subsecs. (g), (h). Pub. L. 117–167 added subsec. (g) and redesignated former subsec. (g) as (h).

¹ See References in Text note below.

§278i. Reports to Congress

(a) Information to Congress on Institute activities

The Director shall keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with regard to all of the activities of the Institute.

(b) Justification for changes in policies and fees

The Director shall justify in writing all changes in policies regarding fees for standard reference materials and calibration services occurring after June 30, 1987, including a description of the anticipated impact of any proposed changes on demand for and anticipated revenues from the materials and services. Changes in policy and fees shall not be effective unless and until the Director has submitted the proposed schedule and justification to the Congress and 30 days on which both Houses of Congress are in session have elapsed since such submission, except that the requirement of this sentence shall not apply with respect to adjustments which are based solely on changes in the costs of raw materials or of producing and delivering standard reference materials or calibration services.

(Mar. 3, 1901, ch. 872, §23, as added Pub. L. 100–418, title V, §5114(2), Aug. 23, 1988, 102 Stat. 1432; amended Pub. L. 110–69, title III, §3004, Aug. 9, 2007, 121 Stat. 590; Pub. L. 114–329, title II, §204(a)(1)(B)(i), Jan. 6, 2017, 130 Stat. 2998.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsecs. (c), (d). Pub. L. 114–329 struck out subsecs. (c) and (d) which required the Director to submit to Congress a 3-year programmatic planning document for the Institute and annual updates.

2007—Subsecs. (c), (d). Pub. L. 110–69 added subsecs. (c) and (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§278j. Studies by National Research Council

The Director may periodically contract with the National Research Council for advice and studies to assist the Institute to serve United States industry and science. The subjects of such advice and studies may include—

- (1) the competitive position of the United States in key areas of manufacturing and emerging technologies and research activities which would enhance that competitiveness;
- (2) potential activities of the Institute, in cooperation with industry and the States, to assist in the transfer and dissemination of new technologies for manufacturing and quality assurance; and
- (3) identification and assessment of likely barriers to widespread use of advanced manufacturing technology by the United States workforce, including training and other initiatives which could lead to a higher percentage of manufacturing jobs of United States companies being located within the borders of our country.

(Mar. 3, 1901, ch. 872, §24, as added Pub. L. 100–418, title V, §5114(2), Aug. 23, 1988, 102 Stat. 1432.)

§278k. Hollings Manufacturing Extension Partnership

(a) Definitions

In this section:

(1) Appropriate committees of congress

The term "appropriate committees of Congress" means—

- (A) the Committee on Commerce, Science, and Transportation of the Senate; and
- (B) the Committee on Science, Space, and Technology of the House of Representatives.

(2) Area career and technical education school

The term "area career and technical education school" has the meaning given the term in section 2302 of title 20.

(3) Center

The term "Center" means a manufacturing extension center that—

- (A) is created under subsection (b); and
- (B) is affiliated with an eligible entity that applies for and is awarded financial support under subsection (e).

(4) Community college

The term "community college" means an institution of higher education (as defined under section 1001(a) of title 20) at which the highest degree that is predominately awarded to students is an associate's degree.

(5) Eligible entity

The term "eligible entity" means a United States-based nonprofit institution, an institution of higher education, or a State, United States territory, local, or tribal government or a consortium thereof.

(6) Historically Black college and university

The term "historically Black college and university" has the meaning given the term "part B institution" in section 1061 of title 20.

(7) ¹ Institution of higher education

The term "institution of higher education" has the meaning given such term in section 1001 of title 20.

(7) ¹ Hollings Manufacturing Extension Partnership or Program

The term "Hollings Manufacturing Extension Partnership" or "Program" means the program established under subsection (b).

(8) MEP Advisory Board

The term "MEP Advisory Board" means the Manufacturing Extension Partnership Advisory Board established under subsection (n).²

(9) Minority-serving institution

The term "minority-serving institution" means a Hispanic-serving institution as defined in section 1101a(a) of title 20; an Alaska Native-serving institution or Native Hawaiian-serving institution as defined in section 1059d(b) of title 20; or a Predominantly Black institution, Asian American and Native American Pacific Islander-serving institution, or Native American-serving nontribal institution as defined in section 1067q(c) of title 20.

(10) Secondary school

The term "secondary school" has the meaning given such term in section 7801 of title 20.

(11) Tribal College or University

The term "Tribal College or University" has the meaning given the term "Tribal College or University" in section 1059c of title 20.

(b) Establishment and purpose

The Secretary, acting through the Director and, if appropriate, through other Federal officials, shall establish a program to provide assistance for the creation and support of manufacturing extension centers for the transfer of manufacturing technology and best business practices.

(c) Objective

The objective of the Program shall be to enhance competitiveness, productivity, and technological performance in United States manufacturing through—

(1) the transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

(2) the participation of individuals from industry, institutions of higher education, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

(3) efforts to make new manufacturing technology and processes usable by United States-based small and medium-sized companies;

(4) the active dissemination of scientific, engineering, technical, and management information about manufacturing to United States-based industrial firms, including small and medium-sized manufacturing companies;

(5) the utilization, when appropriate, of the expertise and capability that exists in Federal agencies, other than the Institute, and federally-sponsored laboratories;

(6) the provision to secondary schools, community colleges, and area career and technical education schools, including those in underserved and rural communities, of information about the job skills needed in manufacturing companies, including small and medium-sized manufacturing businesses in the regions they serve;

(7) the promotion and expansion of certification systems offered through industry, associations, local secondary schools and local colleges, including historically Black colleges and universities, Tribal Colleges or Universities, minority-serving institutions, community colleges, and secondary

schools and colleges in underserved and rural communities, when appropriate, including efforts such as facilitating training, supporting new or existing apprenticeships or other applied learning opportunities, and providing access to information and experts, to address workforce needs and skills gaps in order to assist small- and medium-sized manufacturing businesses; and

(8) the growth in employment and wages at United States-based small and medium-sized companies.

(d) Activities

The activities of a Center shall include—

(1) the establishment of automated manufacturing systems and other advanced production technologies, at United States-based industrial facilities, including small and medium manufacturing companies based on Institute-supported research, for the purpose of demonstrations and technology transfer;

(2) the active transfer and dissemination of research findings and Center expertise to a wide range of United States-based companies and enterprises, particularly small and medium-sized manufacturers; and

(3) the facilitation of collaborations and partnerships between United States-based small and medium-sized manufacturing companies and local high schools, community colleges, and area career and technical education schools, including those in underserved and rural communities, to help those entities better understand the specific needs of manufacturers and to help manufacturers better understand the skill sets that students learn in the programs offered by such colleges and schools.

(e) Financial assistance

(1) Authorization

Except as provided in paragraph (2), the Secretary may provide financial assistance for the creation and support of a Center through a cooperative agreement with an eligible entity.

(2) Cost sharing

The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to establish and support a Center.

(3) Rule of construction

For purposes of paragraph (2), any amount received by an eligible entity for a Center under a provision of law other than paragraph (1) shall not be considered an amount provided under paragraph (1).

(4) Regulations

The Secretary may revise or promulgate such regulations as necessary to carry out this subsection.

(f) Applications

(1) In general

An eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Program description

The Secretary shall establish and update, as necessary—

(A) a description of the Program;

(B) the application procedures;

(C) performance metrics;

(D) criteria for determining qualified applicants; and ³

(E) criteria for choosing recipients of financial assistance from among the qualified applicants.³

(F) procedures for determining allowable cost share contributions; and

(G) such other program policy objectives and operational procedures as the Secretary considers necessary.

(3) Cost sharing

(A) In general

To be considered for financial assistance under this section, an applicant shall provide adequate assurances that the applicant and if applicable, the applicant's partnering organizations, will obtain funding for not less than 50 percent of the capital and annual operating and maintenance funds required to establish and support the Center from sources other than the financial assistance provided under subsection (e).

(B) Agreements with other entities

In meeting the cost-sharing requirement under subparagraph (A), an eligible entity may enter into an agreement with 1 or more other entities, such as a private industry, institutions of higher education, or a State, United States territory, local, or tribal government for the contribution by that other entity of funding if the Secretary determines the agreement—

- (i) is programmatically reasonable;
- (ii) will help accomplish programmatic objectives; and
- (iii) is allocable under Program procedures under subsection (f)(2).

(4) Legal rights

Each applicant shall include in the application a proposal for the allocation of the legal rights associated with any intellectual property which may result from the activities of the Center.

(5) Merit review of applications

(A) In general

The Secretary shall subject each application to merit review.

(B) Considerations

In making a decision whether to approve an application and provide financial assistance under subsection (e), the Secretary shall consider, at a minimum—

- (i) the merits of the application, particularly those portions of the application regarding technology transfer, training and education, and adaptation of manufacturing technologies to the needs of particular industrial sectors in the United States;
- (ii) the quality of service to be provided;
- (iii) the geographical diversity and extent of the service area; and
- (iv) the type and percentage of funding and in-kind commitment from other sources under paragraph (3).

(g) Evaluations

(1) Third and eighth year evaluations by panel

(A) In general

The Secretary shall ensure that each Center is evaluated during its third and eighth years of operation by an evaluation panel appointed by the Secretary.

(B) Composition

The Secretary shall ensure that each evaluation panel appointed under subparagraph (A) is composed of—

- (i) private experts, none of whom are connected with the Center evaluated by the panel; and
- (ii) Federal officials.

(C) Chairperson

For each evaluation panel appointed under subparagraph (B), the Secretary shall appoint a chairperson who is an official of the Institute.

(2) Fifth year evaluations by Secretary

In the fifth year of operation of a Center, the Secretary shall conduct a review of the Center.

(3) Performance measurement

In evaluating a Center an evaluation panel or the Secretary, as applicable, shall measure the performance of the Center against—

- (A) the objective specified in subsection (c);
- (B) the performance metrics under subsection (f)(2)(C); and
- (C) such other criterion as considered appropriate by the Secretary.

(4) Positive evaluations

If an evaluation of a Center is positive, the Secretary may continue to provide financial assistance for the Center—

- (A) in the case of an evaluation occurring in the third year of a Center, through the fifth year of the Center;
- (B) in the case of an evaluation occurring in the fifth year of a Center, through the eighth year of the Center; and
- (C) in the case of an evaluation occurring in the eighth year of a Center, through the tenth year of the Center.

(5) Other than positive evaluations

(A) Probation

If an evaluation of a Center is other than positive, the Secretary shall put the Center on probation during the period beginning on the date that the Center receives notice under subparagraph (B)(i) and ending on the date that the reevaluation is complete under subparagraph (B)(iii).

(B) Notice and reevaluation

If a Center receives an evaluation that is other than positive, the evaluation panel or Secretary, as applicable, shall—

- (i) notify the Center of the reason, including any deficiencies in the performance of the Center identified during the evaluation;
- (ii) assist the Center in remedying the deficiencies by providing the Center, not less frequently than once every 3 months, an analysis of the Center, if considered appropriate by the panel or Secretary, as applicable; and
- (iii) reevaluate the Center not later than 1 year after the date of the notice under clause (i).

(C) Continued support during period of probation

(i) In general

The Secretary may continue to provide financial assistance under subsection (e) for a Center during the probation period.

(ii) Post probation

After the period of probation, the Secretary shall not provide any financial assistance unless the Center has received a positive evaluation under subparagraph (B)(iii).

(6) Failure to remedy

(A) In general

If a Center fails to remedy a deficiency or to show significant improvement in performance before the end of the probation period under paragraph (5), the Secretary shall conduct a competition to select an operator for the Center under subsection (h).

(B) Treatment of Centers subject to new competition

Upon the selection of an operator for a Center under subsection (h), the Center shall be considered a new Center and the calculation of the years of operation of that Center for

purposes of paragraphs (1) through (5) of this subsection and subsection (h)(1) shall start anew.

(h) Reapplication competition for financial assistance after 10 years

(1) In general

If an eligible entity has operated a Center under this section for a period of 10 consecutive years, the Secretary shall conduct a competition to select an eligible entity to operate the Center in accordance with the process plan under subsection (i).

(2) Incumbent eligible entities

An eligible entity that has received financial assistance under this section for a period of 10 consecutive years and that the Secretary determines is in good standing shall be eligible to compete in the competition under paragraph (1).

(3) Treatment of Centers subject to reapplication competition

Upon the selection of an operator for a Center under paragraph (1), the Center shall be considered a new Center and the calculation of the years of operation of that Center for purposes of paragraphs (1) through (5) of subsection (g) shall start anew.

(i) Process plan

Not later than 180 days after January 6, 2017, the Secretary shall implement and submit to Congress a plan for how the Institute will conduct an evaluation, competition, and reapplication competition under this section.

(j) Operational requirements

(1) Protection of confidential information of Center clients

The following information, if obtained by the Federal Government in connection with an activity of a Center or the Program, shall be exempt from public disclosure under section 552 of title 5:

- (A) Information on the business operation of any participant in the Program or of a client of a Center.
- (B) Trade secrets of any client of a Center.

(k) Oversight boards

(1) In general

As a condition on receipt of financial assistance for a Center under subsection (e), an eligible entity shall establish a board to oversee the operations of the Center.

(2) Standards

(A) In general

The Director shall establish appropriate standards for each board described under paragraph (1).

(B) Considerations

In establishing the standards, the Director shall take into account the type and organizational structure of an eligible entity.

(C) Requirements

The standards shall address—

- (i) membership;
- (ii) composition;
- (iii) term limits;
- (iv) conflicts of interest; and
- (v) such other requirements as the Director considers necessary.

(3) Membership

(A) In general

Each board established under paragraph (1) shall be composed of members as follows:

- (i) The membership of each board shall be representative of stakeholders in the region in which the Center is located.
- (ii) A majority of the members of the board shall be selected from among individuals who own or are employed by small or medium-sized manufacturers.

(B) Limitation

A member of a board established under paragraph (1) may not serve on more than 1 board established under that paragraph.

(4) Bylaws

(A) In general

Each board established under paragraph (1) shall adopt and submit to the Director bylaws to govern the operation of the board.

(B) Conflicts of interest

Bylaws adopted under subparagraph (A) shall include policies to minimize conflicts of interest, including such policies relating to disclosure of relationships and recusal as may be necessary to minimize conflicts of interest.

(l) Acceptance of funds

(1) In general

To the extent provided in advance in appropriations Acts, other Federal departments and agencies may transfer amounts to the Institute, and the Secretary and Director may accept and make available cash donations from the private sector pursuant to section 272(c)(7) of this title, to be used for strengthening United States manufacturing under this section.

(2) Competitive awards

Funds accepted from other Federal departments and agencies and from the private sector under paragraph (1) shall be awarded competitively by the Secretary and Director to Centers, provided that the Secretary and Director may make noncompetitive ³ awards, pursuant to this section or section 278k-1 of this title, or as a non-competitive ³ contract, as appropriate, if the Secretary and Director determine that—

- (A) the manufacturing market or sector targeted is limited geographically or in scope;
- (B) the number of States (or territory, in the case of Puerto Rico) with Centers serving manufacturers of such market or sector is five or fewer; and
- (C) such Center has or Centers have received a positive evaluation in the most recent evaluation conducted pursuant to subsection (g).

(m) MEP Advisory Board

(1) Establishment

There is established within the Institute a Manufacturing Extension Partnership Advisory Board.

(2) Membership

(A) Composition

(i) In general

The MEP Advisory Board shall consist of not fewer than 10 members appointed by the Director and broadly representative of stakeholders.

(ii) Requirements

Of the members appointed under clause (i)—

- (I) at least 2 members shall be employed by or on an advisory board for a Center;

(II) at least 5 members shall be from United States small businesses in the manufacturing sector; and

(III) at least 1 member shall represent a community college.

(iii) Limitation

No member of the MEP Advisory Board shall be an employee of the Federal Government.

(B) Term

Except as provided in subparagraph (C), the term of office of each member of the MEP Advisory Board shall be 3 years.

(C) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(D) Serving consecutive terms

Any person who has completed 2 consecutive full terms of service on the MEP Advisory Board shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(3) Meetings

The MEP Advisory Board shall—

(A) meet not less than biannually; and

(B) provide to the Director—

(i) advice on the activities, plans, and policies of the Program;

(ii) assessments of the soundness of the plans and strategies of the Program; and

(iii) assessments of current performance against the plans of the Program.

(4) Applicability of chapter 10 of title 5

(A) In general

In discharging its duties under this subsection, the MEP Advisory Board shall function solely in an advisory capacity, in accordance with chapter 10 of title 5.

(B) Exception

Section 1013 of title 5 shall not apply to the MEP Advisory Board.

(5) Annual report

(A) In general

At a minimum, the MEP Advisory Board shall transmit an annual report to the Secretary for transmittal to Congress not later than 30 days after the submission to Congress of the President's annual budget under section 1105 of title 31.

(B) Contents

The report shall address the status of the Program and describe the relevant sections of the programmatic planning document and updates thereto transmitted to Congress by the Director under subsections (c) and (d) of section 278i ⁴ of this title.

(n) Small manufacturers

(1) Evaluation of obstacles

As part of the Program, the Director shall—

(A) identify obstacles that prevent United States-based small manufacturers from effectively competing in the global market;

(B) implement a comprehensive plan to train the Centers to address the obstacles identified in paragraph (2); and

(C) facilitate improved communication between the Centers to assist such manufacturers in implementing appropriate, targeted solutions to the obstacles identified in paragraph (2).

(2) Development of open access resources

As part of the Program, the Secretary shall develop open access resources that address best practices related to inventory sourcing, supply chain management, manufacturing techniques, available Federal resources, and other topics to further the competitiveness and profitability of small manufacturers.

(Mar. 3, 1901, ch. 872, §25, as added Pub. L. 100–418, title V, §5121(a), Aug. 23, 1988, 102 Stat. 1433; amended Pub. L. 102–245, title I, §105(e), Feb. 14, 1992, 106 Stat. 12; Pub. L. 105–309, §2, Oct. 30, 1998, 112 Stat. 2935; Pub. L. 110–69, title III, §3003, Aug. 9, 2007, 121 Stat. 587; Pub. L. 111–240, title IV, §4226(a), Sept. 27, 2010, 124 Stat. 2598; Pub. L. 111–358, title IV, §404(a)–(f)(1), (3), (h), (i), title VII, §703, Jan. 4, 2011, 124 Stat. 4001–4003, 4042; Pub. L. 114–329, title V, §501(b), Jan. 6, 2017, 130 Stat. 3023; Pub. L. 117–167, div. B, title II, §§10252(a), (b), (d), 10255, Aug. 9, 2022, 136 Stat. 1499, 1503; Pub. L. 117–286, §4(a)(65), Dec. 27, 2022, 136 Stat. 4312.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsections (c) and (d) of section 278i of this title, referred to in subsec. (m)(5)(B), which related to 3-year programmatic planning documents and annual updates, were repealed by Pub. L. 114–329, title II, §204(a)(1)(B)(i), Jan. 6, 2017, 130 Stat. 2998.

AMENDMENTS

2022—Subsec. (a)(5). Pub. L. 117–167, §10252(b)(1), struck out "or consortium thereof," before "an institution of higher education" and inserted "or a consortium thereof" before period at end.

Subsec. (a)(6) to (8). Pub. L. 117–167, §10255(1)–(4), added pars. (6) defining historically Black college and university and (7) defining institution of higher education and redesignated former pars. (6) defining Hollings Manufacturing Extension Partnership or Program and (7) defining MEP Advisory Board as (7) and (8), respectively.

Subsec. (a)(9) to (11). Pub. L. 117–167, §10255(5), added pars. (9) to (11).

Subsec. (c)(4). Pub. L. 117–167, §10252(b)(2), inserted "United States-based" before "industrial".

Subsec. (c)(6). Pub. L. 117–167, §10252(d)(1)(A), substituted "secondary schools, community colleges, and area career and technical education schools, including those in underserved and rural communities," for "community colleges and area career and technical education schools".

Subsec. (c)(7). Pub. L. 117–167, §10252(d)(1)(B), substituted "local secondary schools and local colleges, including historically Black colleges and universities, Tribal Colleges or Universities, minority-serving institutions, community colleges, and secondary schools and colleges in underserved and rural communities," for "and local colleges" and inserted "or other applied learning opportunities" after "apprenticeships".

Subsec. (d)(1). Pub. L. 117–167, §10252(b)(3)(A), inserted "at United States-based industrial facilities, including small and medium manufacturing companies" before "based".

Subsec. (d)(2). Pub. L. 117–167, §10252(b)(3)(B), inserted "United States-based" before "companies".

Subsec. (d)(3). Pub. L. 117–167, §10252(d)(2), substituted "and local high schools, community colleges, and area career and technical education schools, including those in underserved and rural communities," for "community colleges, and area career and technical education schools,".

Pub. L. 117–167, §10252(b)(3)(C), inserted "United States-based" before "small".

Subsec. (f)(5)(B)(i). Pub. L. 117–167, §10252(b)(4), inserted before semicolon at end "in the United States".

Subsec. (l). Pub. L. 117–167, §10252(a), amended subsec. (l) generally. Prior to amendment, text read as follows: "In addition to such sums as may be appropriated to the Secretary and Director to operate the Program, the Secretary and Director may also accept funds from other Federal departments and agencies and from the private sector under section 272(c)(7) of this title, to be available to the extent provided by appropriations Acts, for the purpose of strengthening United States manufacturing."

Subsec. (m)(4). Pub. L. 117–286, §4(a)(65)(A), substituted "Applicability of chapter 10 of title 5" for "FACA applicability" in heading.

Subsec. (m)(4)(A). Pub. L. 117–286, §4(a)(65)(B), substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act (5 U.S.C. App.)."

Subsec. (m)(4)(B). Pub. L. 117–286, §4(a)(65)(C), substituted "Section 1013 of title 5" for "Section 14 of

the Federal Advisory Committee Act".

Subsec. (n)(1)(A). Pub. L. 117-167, §10252(b)(5), inserted "United States-based" before "small".

2017—Pub. L. 114-329 amended section generally. Prior to amendment, section related to establishment of regional centers for the transfer of manufacturing technology, the MEP Advisory Board, a competitive grant program, and an innovative services initiative.

2011—Subsec. (a). Pub. L. 111-358, §404(f)(3)(A), substituted "regional centers for the transfer of manufacturing technology" for "Regional Centers for the Transfer of Manufacturing Technology" in introductory provisions.

Subsec. (a)(6). Pub. L. 111-358, §404(a), added par. (6).

Subsec. (c)(7), (8). Pub. L. 111-358, §404(d), added pars. (7) and (8).

Subsec. (e)(4). Pub. L. 111-358, §404(e), amended par. (4) generally. Prior to amendment, text read as follows: "In discharging its duties under this subsection, the MEP Advisory Board shall function solely in an advisory capacity, in accordance with the Federal Advisory Committee Act."

Subsec. (f)(3). Pub. L. 111-358, §703(a), substituted "to add capabilities to the MEP program, including the development of" for "to develop" and "Centers may be reimbursed for costs incurred under the program. These themes—" for "These themes shall be related to projects associated with manufacturing extension activities, including supply chain integration and quality management, and including the transfer of technology based on the technological needs of manufacturers and available technologies from institutions of higher education, laboratories, and other technology producing entities, or extend beyond these traditional areas." and added subpars. (A) to (C).

Pub. L. 111-358, §404(i), substituted "Director of the Hollings MEP program," for "Director of the Centers program,".

Subsec. (f)(5). Pub. L. 111-358, §703(b), amended par. (5) generally. Prior to amendment, text read as follows: "Awards under this subsection shall be peer reviewed and competitively awarded. The Director shall select proposals to receive awards—

"(A) that utilize innovative or collaborative approaches to solving the problem described in the competition;

"(B) that will improve the competitiveness of industries in the region in which the Center or Centers are located; and

"(C) that will contribute to the long-term economic stability of that region."

Subsec. (f)(7). Pub. L. 111-358, §703(c), added par. (7) relating to duration.

Subsec. (f)(8), (9). Pub. L. 111-358, §703(c), added pars. (8) and (9).

Subsec. (g). Pub. L. 111-358, §404(b), added subsec. (g).

Subsec. (h). Pub. L. 111-358, §404(c), added subsec. (h).

Subsec. (i). Pub. L. 111-358, §404(f)(1), added subsec. (i).

Subsec. (j). Pub. L. 111-358, §404(f)(3)(B), added subsec. (j).

Subsec. (k). Pub. L. 111-358, §404(h), added subsec. (k).

2010—Subsec. (f)(7). Pub. L. 111-240 added par. (7) relating to global marketplace projects.

2007—Subsec. (c)(3). Pub. L. 110-69, §3003(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on August 23, 1988, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2). In order to receive assistance under this section, an applicant shall provide adequate assurances that it will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the last three years. Each applicant shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities."

Subsec. (c)(5). Pub. L. 110-69, §3003(b), inserted "A Center that has not received a positive evaluation by the evaluation panel shall be notified by the panel of the deficiencies in its performance and shall be placed on probation for one year, after which time the panel shall reevaluate the Center. If the Center has not addressed the deficiencies identified by the panel, or shown a significant improvement in its performance, the Director shall conduct a new competition to select an operator for the Center or may close the Center." after "at declining levels."

Subsec. (d). Pub. L. 110-69, §3003(c), added subsec. (d) and struck out former subsec. (d). Text of former subsec. (d) read as follows: "In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other

Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section."

Subsec. (e). Pub. L. 110-69, §3003(d), added subsec. (e).

Subsec. (f). Pub. L. 110-69, §3003(e), added subsec. (f).

1998—Subsec. (c)(5). Pub. L. 105-309 substituted ". After the sixth year, a Center may receive additional financial support under this section if it has received a positive evaluation through an independent review, under procedures established by the Institute. Such an independent review shall be required at least every two years after the sixth year of operation. Funding received for a fiscal year under this section after the sixth year of operation shall not exceed one third of the capital and annual operating and maintenance costs of the Center under the program." for ", which are designed to ensure that the Center no longer needs financial support from the Institute by the seventh year. In no event shall funding for a Center be provided by the Department of Commerce after the sixth year of the operation of a Center."

1992—Subsec. (c)(6). Pub. L. 102-245, §105(e)(1), inserted before period at end "except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director".

Subsec. (d). Pub. L. 102-245, §105(e)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated for the purposes of carrying out this section, a combined total of not to exceed \$40,000,000 for fiscal years 1989 and 1990. Such sums shall remain available until expended."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Pub. L. 108-447, div. B, title II, Dec. 8, 2004, 118 Stat. 2879, which in part renamed the Manufacturing Extension Partnership Program authorized under this section as the Hollings Manufacturing Partnership Program and which named the centers established and receiving funding under former subsec. (a) of this section the Hollings Manufacturing Extension Centers, was repealed by Pub. L. 111-358, title IV, §404(f)(2), Jan. 4, 2011, 124 Stat. 4002.

SAVINGS PROVISIONS

Pub. L. 114-329, title V, §501(f), Jan. 6, 2017, 130 Stat. 3033, provided that: "Notwithstanding the amendments made by subsections (a) [sic; subsec. (a) is set out as a Short Title of 2017 Amendment note under section 271 of this title] and (b) of this section [amending this section], the Secretary of Commerce may carry out section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k) as that section was in effect on the day before the date of enactment of this Act [Jan. 6, 2017], with respect to existing grants, agreements, cooperative agreements, or contracts, and with respect to applications for such items that are received by the Secretary prior to the date of enactment of this Act."

RESOURCE OPTIMIZATION

Pub. L. 117-167, div. B, title II, §10251(b), Aug. 9, 2022, 136 Stat. 1498, provided that: "Of amounts authorized for the Hollings Manufacturing Extension Partnership program under section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k), the Secretary [of Commerce] shall optimize funding across sections 25 and 25A of such Act [15 U.S.C. 278k, 278k-1], as well as the program established under section 25B of such Act [15 U.S.C. 278k-2] (as added by subsection (a)), to the extent practicable and subject to the availability of appropriations, in order to maximize Center (as such term is defined in such section 25) participation as well as competitiveness, productivity, and technological performance in United States manufacturing."

PATENT RIGHTS

Pub. L. 114-329, title V, §501(g), Jan. 6, 2017, 130 Stat. 3033, provided that: "The provisions of chapter 18 of title 35, United States Code, shall apply, to the extent not inconsistent with section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k) and section 25 [sic] of that Act, to the promotion of technology from research by Centers under those sections, except for contracts for such specific technology extension or transfer services as may be specified by the Director of NIST [National Institute of Standards and Technology] or under other law."

FINDINGS

Pub. L. 111-358, title VII, §702, Jan. 4, 2011, 124 Stat. 4041, provided that: "Congress finds the following:

"(1) Over its 20-year existence, the Hollings Manufacturing Extension Partnership has proven its value to manufacturers as demonstrated by the resulting impact on jobs and the economies of all 50 States and the Nation as a whole.

"(2) The Hollings Manufacturing Extension Partnership has helped thousands of companies reinvest in themselves through process improvement and business growth initiatives leading to more sales, new markets, and the adoption of technology to deliver new products and services.

"(3) Manufacturing is an increasingly important part of the construction sector as the industry moves to the use of more components and factory built sub-assemblies.

"(4) Construction practices must become more efficient and precise if the United States is to construct and renovate its building stock to reduce related carbon emissions to levels that are consistent with combating global warming.

"(5) Many companies involved in construction are small, without access to innovative manufacturing techniques, and could benefit from the type of training and business analysis activities that the Hollings Manufacturing Extension Partnership routinely provides to the Nation's manufacturers and their supply chains.

"(6) Broadening the competitiveness grant program under [former] section 25(f) of the National Institute of Standards and Technology Act ([former] 15 U.S.C. 278k(f), now see 15 U.S.C. 278k-1) could help develop and diffuse knowledge necessary to capture a large portion of the estimated \$100 billion or more in energy savings if buildings in the United States met the level and quality of energy efficiency now found in buildings in certain other countries.

"(7) It is therefore in the national interest to expand the capabilities of the Hollings Manufacturing Extension Partnership to be supportive of the construction and green energy industries."

AGREEMENTS AND CONTRIBUTIONS FOR COLLECTIVE RESEARCH AND DEVELOPMENT INITIATIVES

Pub. L. 108-7, div. B, title II, Feb. 20, 2003, 117 Stat. 73, provided in part: "That hereafter the Secretary of Commerce is authorized to enter into agreements with one or more nonprofit organizations for the purpose of carrying out collective research and development initiatives pertaining to [former] 15 U.S.C. 278k paragraph (a), and is authorized to seek and accept contributions from public and private sources to support these efforts as necessary."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 107-77, title II, Nov. 28, 2001, 115 Stat. 774.

ADDITIONAL RENEWAL OF FEDERAL FINANCIAL ASSISTANCE FOR CENTERS

Pub. L. 105-277, div. A, §101(b) [title II], Oct. 21, 1998, 112 Stat. 2681-50, 2681-83, which provided that Federal financial assistance awarded by the Secretary of Commerce to a Regional Center for the Transfer of Manufacturing Technology could continue beyond six years and could be renewed for additional periods, not to exceed one year, at a rate not to exceed one-third of the Center's total annual costs or the level of funding in the sixth year, whichever was less, subject before any such renewal to a positive evaluation of the Center and to a finding by the Secretary of Commerce that continuation of Federal funding to the Center was in the best interest of the Regional Centers for the Transfer of Manufacturing Technology Program, was from the Departments of Commerce Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, and was not repeated in subsequent appropriations Acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105-119, title II, Nov. 26, 1997, 111 Stat. 2476.

Pub. L. 104-208, div. A, title I, §101(a) [title II], Sept. 30, 1996, 110 Stat. 3009, 3009-36.

Pub. L. 103-317, title II, Aug. 26, 1994, 108 Stat. 1741.

PUBLICATION IN FEDERAL REGISTER

Pub. L. 100-519, title I, §102(d), Oct. 24, 1988, 102 Stat. 2590, provided that the requirement of former subsec. (c)(2) of this section was met by the publication made by the National Bureau of Standards on July 18, 1988, at 53 F.R. 27060.

¹ *So in original. Two pars. (7) have been enacted.*

² *So in original. Probably should refer to subsec. (m).*

³ *So in original.*

⁴ [See References in Text note below.](#)

§278k–1. Competitive awards program

(a) Establishment

The Director shall establish within the Hollings Manufacturing Extension Partnership under section 278k of this title and section 278l of this title a program of competitive awards among participants described in subsection (b) of this section for the purposes described in subsection (c).

(b) Participants

Participants receiving awards under this section shall be Centers, or a consortium of Centers.

(c) Purpose, themes, and reimbursement

(1) Purpose

The purpose of the program established under subsection (a) is to add capabilities to the Hollings Manufacturing Extension Partnership, including the development of projects to solve new or emerging manufacturing problems as determined by the Director, in consultation with the Director of the Hollings Manufacturing Extension Partnership, the MEP Advisory Board, other Federal agencies, and small and medium-sized manufacturers.

(2) Themes

The Director may identify 1 or more themes for a competition carried out under this section, which may vary from year to year, as the Director considers appropriate after assessing the needs of United States manufacturers and the success of previous competitions.

(3) Reimbursement

Centers may be reimbursed for costs incurred by the Centers under this section.

(d) Applications

Applications for awards under this section shall be submitted in such manner, at such time, and containing such information as the Director shall require in consultation with the MEP Advisory Board.

(e) Selection

(1) Peer review and competitively awarded

The Director shall ensure that awards under this section are peer reviewed and competitively awarded.

(2) Geographic diversity

The Director shall endeavor to have broad geographic diversity among selected proposals.

(3) Criteria

The Director shall select applications to receive awards that the Director determines will achieve 1 or more of the following:

(A) Improve the competitiveness of industries in the region in which the Center or Centers are located.

(B) Create jobs or train newly hired employees.

(C) Promote the transfer and commercialization of research and technology from institutions of higher education, national laboratories or other federally funded research programs, and nonprofit research institutes.

(D) Recruit a diverse manufacturing workforce, including through outreach to underrepresented populations, including individuals identified in section 1885a or section 1885b of title 42.

(E) Such other result as the Director determines will advance the objective set forth in section

278k(c) of this title or in section 278l of this title.

(f) Program Contribution

Recipients of awards under this section shall not be required to provide a matching contribution.

(g) Global marketplace projects

In making an award under this section, the Director, in consultation with the MEP Advisory Board and the Secretary, may take into consideration whether an application has significant potential for enhancing the competitiveness of small and medium-sized United States manufacturers in the global marketplace.

(h) Duration

The duration of an award under this section shall be for not more than 3 years.

(i) Definitions

The terms used in this section have the meanings given the terms in section 278k of this title.

(Mar. 3, 1901, ch. 872, §25A, as added Pub. L. 114–329, title V, §501(c), Jan. 6, 2017, 130 Stat. 3031; amended Pub. L. 117–167, div. B, title II, §10252(c), Aug. 9, 2022, 136 Stat. 1499.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 278k(f) of this title, prior to the general amendment of section 278k by Pub. L. 114–329.

AMENDMENTS

2022—Subsec. (c)(2). Pub. L. 117–167 inserted "United States" before "manufacturers".

§278k–2. Expansion awards pilot program

(a) Definitions

The terms used in this section have the meanings given the terms in section 278k of this title.

(b) Establishment

The Director shall establish, subject to the availability of appropriations, as a part of the Hollings Manufacturing Extension Partnership under sections 278k and 278k–1 of this title, a pilot program of expansion awards among participants described in subsection (c) for the purposes described in subsection (e).

(c) Participants

Participants receiving awards under this section shall be Centers, or a consortium of Centers (as such term is defined in section 278k of this title).

(d) Award amounts

Subject to the availability of appropriations, an award for a recipient under this section shall be in an amount equal to the sum of the following:

- (1) Such amount as the Director considers appropriate as a minimum base funding level for each award under this section.
- (2) Such additional amount as the Director considers in proportion to the manufacturing density of the region of the recipient.
- (3) Such supplemental amounts as the Director considers appropriate.

(e) Purpose of awards

An award under this section shall be made for one or more of the following purposes:

- (1) To provide worker education, training, development, and entrepreneurship training and to connect individuals or business with such services offered in their community, which may include

employee ownership and workforce training, including connecting manufacturers with career and technical education entities, institutions of higher education (including community colleges), workforce development boards, labor organizations, and nonprofit job training providers to develop and support training and job placement services, including apprenticeship and online learning platforms, for new and incumbent workers, programming to prevent job losses when adopting new technologies and processes, and development of employee ownership practices.

(2) To provide services to improve the resiliency of domestic supply chains.

(3) To mitigate vulnerabilities to cyberattacks, including helping to offset the cost of cybersecurity projects for small manufacturers.

(4) To expand advanced technology services to United States-based small- and medium-sized manufacturers, which may include—

(A) developing technology demonstration laboratories;

(B) training and demonstration in areas of supply chain and critical technology needs, including a focus on the demonstration of technologies developed by companies based in the United States;

(C) services for the adoption of advanced technologies, including smart manufacturing technologies and practices; and

(D) establishing partnerships, for the development, demonstration, and deployment of advanced technologies, with—

(i) national laboratories (as defined in section 15801 of title 42);

(ii) Federal laboratories;

(iii) Manufacturing USA institutes (as described in section 278s(d) of this title); and

(iv) institutions of higher education.

(5) To build capabilities across the Hollings Manufacturing Extension Partnership for domestic supply chain resiliency and optimization, including—

(A) assessment of domestic manufacturing capabilities, expanded capacity for researching and deploying information on supply chain risk, hidden costs of reliance on offshore suppliers, redesigning products and processes to encourage reshoring, and other relevant topics; and

(B) expanded services to provide industrywide support that assists United States manufacturers with reshoring manufacturing to strengthen the resiliency of domestic supply chains, including in critical technology areas and foundational manufacturing capabilities that are key to domestic manufacturing competitiveness and resiliency, including forming, casting, machining, joining, surface treatment, tooling, and metal or chemical refining.

(f) Reimbursement

The Director may reimburse Centers for costs incurred by the Centers under this section.

(g) Applications

Applications for awards under this section shall be submitted in such manner, at such time, and containing such information as the Director shall require in consultation with the Manufacturing Extension Partnership Advisory Board.

(h) Selection

(1) Reviewed and merit-based

The Director shall ensure that awards under this section are reviewed and merit-based.

(2) Geographic diversity

The Director shall endeavor to have broad geographic diversity among selected proposals.

(3) Criteria

The Director shall select applications consistent with the purposes identified pursuant to subsection (e) to receive awards that the Director determines will achieve one or more of the following:

(A) Improvement of the competitiveness of industries in the region in which the Center or

Centers are located.

(B) Creation of jobs or training of newly hired employees.

(C) Promotion of the transfer and commercialization of research and technology from institutions of higher education, national laboratories, or other federally funded research programs, and nonprofit research institutes.

(D) Recruitment of a diverse manufacturing workforce, including through outreach to underrepresented populations, including individuals identified in section 1885a or section 1885b of title 42.

(E) Any other result the Director determines will advance the objective set forth in section 278k(c) or 278k–1 of this title.

(i) Program contribution

Recipients of awards under this section shall not be required to provide a matching contribution.

(j) Global marketplace projects

In making an award under this section, the Director, in consultation with the Manufacturing Extension Partnership Advisory Board and the Secretary, may take into consideration whether an application has significant potential for enhancing the competitiveness of small and medium-sized United States manufacturers in the global marketplace.

(k) Duration

The Director shall ensure that the duration of an award under this section is aligned and consistent with a Center's cooperative agreement established in section 278k(e) of this title.

(l) Report

Not later than October 1, 2025, the Director shall submit to Congress a report that includes—

(1) a summary description of what activities were funded and the measurable outcomes of such activities;

(2) a description of which types of activities under paragraph (1) could remain as part of a permanent expansion awards program;

(3) a description of which types of activities under paragraph (1) could be integrated into, and supported under, the program under section 278k of this title;

(4) a description of which types of activities under paragraph (1) could be integrated into, and supported under, the competitive awards program under section 278k–1 of this title; and

(5) a recommendation, supported by a clear explanation, as to whether the pilot program should be continued.

(Mar. 3, 1901, ch. 872, §25B, as added Pub. L. 117–167, div. B, title II, §10251(a), Aug. 9, 2022, 136 Stat. 1496.)

§278l. Assistance to State technology programs

(a) In addition to the Hollings Manufacturing Extension Partnership under section 278k of this title, the Secretary, through the Director and, if appropriate, through other officials, shall provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology.

(b) Such assistance from the Institute to State technology programs shall include, but not be limited to—

(1) technical information and advice from Institute personnel;

(2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and

(3) entering into cooperative agreements when authorized to do so under this chapter or any other Act.

(Mar. 3, 1901, ch. 872, §26, as added Pub. L. 100–418, title V, §5121(a), Aug. 23, 1988, 102 Stat.

1435; amended Pub. L. 114–329, title V, §501(e)(3), Jan. 6, 2017, 130 Stat. 3033.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsec. (a). Pub. L. 114–329 substituted "Hollings Manufacturing Extension Partnership" for "Centers program created".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TECHNOLOGY EXTENSION SERVICES

Pub. L. 100–418, title V, §5121(b), (c), Aug. 23, 1988, 102 Stat. 1436, 1437, as amended by Pub. L. 102–245, title I, §105(d), Feb. 14, 1992, 106 Stat. 12, provided that:

"(b) TECHNOLOGY EXTENSION SERVICES.—(1) The Secretary shall conduct a nationwide study of current State technology extension services. The study shall include—

"(A) a thorough description of each State program, including its duration, its annual budget, and the number and types of businesses it has aided;

"(B) a description of any anticipated expansion of each State program and its associated costs;

"(C) an evaluation of the success of the services in transferring technology, modernizing manufacturing processes, and improving the productivity and profitability of businesses;

"(D) an assessment of the degree to which State services make use of Federal programs, including the Small Business Innovative Research program and the programs of the Federal Laboratory Consortium, the National Technical Information Service, the National Science Foundation, the Office of Productivity, Technology, and Innovation, and the Small Business Administration;

"(E) a survey of what additional Federal information and technical assistance the services could utilize; and

"(F) an assessment of how the services could be more effective agents for the transfer of Federal scientific and technical information, including the results and application of Federal and federally funded research.

The Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, at the time of submission of the organization plan for the Institute under section 5112(d)(1) [of Pub. L. 100–418, set out as a note under section 272 of this title], the results of the study and an initial implementation plan for the programs under section 26 of the Act of March 3, 1901 [15 U.S.C. 2781], and under this section [enacting sections 278k to 278m of this title]. The implementation plan shall include methods of providing technical assistance to States and criteria for awarding financial assistance under this section. The Secretary may make use of contractors and experts for any or all of the studies and findings called for in this section.

"(2)(A) The Institute shall enter into cooperative agreements with State technology extension services to—

"(i) demonstrate methods by which the States can, in cooperation with Federal agencies, increase the use of Federal technology by businesses within their States to improve industrial competitiveness; or

"(ii) help businesses in their States take advantage of the services and information offered by the Regional Centers for the Transfer of Manufacturing Technology created under [former] section 25 of the Act of March 3, 1901 [former 15 U.S.C. 278k].

"(B) Any State, for itself or for a consortium of States, may submit to the Secretary an application for a cooperative agreement under this subsection, in accordance with procedures established by the Secretary. To qualify for a cooperative agreement under this subsection, a State shall provide adequate assurances that it will increase its spending on technology extension services by an amount at least equal to the amount of Federal assistance.

"(C) In evaluating each application, the Secretary shall consider—

"(i) the number and types of additional businesses that will be assisted under the cooperative agreement;

"(ii) the extent to which the State extension service will demonstrate new methods to increase the use of Federal technology;

"(iii) geographic diversity; and

"(iv) the ability of the State to maintain the extension service after the cooperative agreement has expired.

"(D) States which are party to cooperative agreements under this subsection may provide services directly

or may arrange for the provision of any or all of such services by institutions of higher education or other non-profit institutions or organizations.

"(3) In carrying out section 26 of the Act of March 3, 1901 [15 U.S.C. 278l], and this subsection, the Secretary shall coordinate the activities with the Federal Laboratory Consortium; the National Technical Information Service; the National Science Foundation; the Office of Productivity, Technology, and Innovation; the Small Business Administration; and other appropriate Federal agencies.

"(4) There are authorized to be appropriated for the purposes of this subsection \$2,000,000 for each of the fiscal years 1989, 1990, and 1991.

"(c) FEDERAL TECHNOLOGY TRANSFER ACT OF 1986.—Nothing in sections [sic] 25 or 26 of the Act of March 3, 1901 [15 U.S.C. 278k, 278l], or in subsection (b) of this section shall be construed as limiting the authorities contained in the Federal Technology Transfer Act of 1986 (Public Law 99–502) [see Short Title of 1986 Amendments note set out under section 3701 of this title]."

§278m. Repealed. Pub. L. 110–69, title III, §3013(d), Aug. 9, 2007, 121 Stat. 599

Section, act Mar. 3, 1901, ch. 872, §27, as added Pub. L. 100–418, title V, §5121(d), Aug. 23, 1988, 102 Stat. 1437, related to the establishment of a program for the evaluation of non-energy inventions.

§278n. Repealed. Pub. L. 114–329, title II, §205(a)(1), Jan. 6, 2017, 130 Stat. 3000

Section, act Mar. 3, 1901, ch. 872, §28, as added Pub. L. 110–69, title III, §3012(b), Aug. 9, 2007, 121 Stat. 593; amended Pub. L. 113–188, title II, §201(d), (e), Nov. 26, 2014, 128 Stat. 2018, related to the Technology Innovation Program.

A prior section 278n, act Mar. 3, 1901, ch. 872, §28, as added Pub. L. 100–418, title V, §5131(a), Aug. 23, 1988, 102 Stat. 1439; amended Pub. L. 102–245, title II, §201(c), Feb. 14, 1992, 106 Stat. 16, related to the Advanced Technology Program, prior to repeal by Pub. L. 110–69, title III, §3012(a), Aug. 9, 2007, 121 Stat. 593.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TECHNOLOGY INNOVATION PROGRAM

Pub. L. 111–240, title IV, §4226(b), Sept. 27, 2010, 124 Stat. 2598, which allowed the Director of NIST to consider the potential for enhancing the competitiveness of small- and medium-sized U.S. businesses in the global marketplace when awarding grants, cooperative agreements, or contracts under this section, was repealed by Pub. L. 114–329, title II, §205(a)(2)(A), Jan. 6, 2017, 130 Stat. 3000.

§278n–1. Emergency communication and tracking technologies research initiative

(a) Establishment

The Director shall establish a research initiative to support the development of emergency communication and tracking technologies for use in locating trapped individuals in confined spaces, such as underground mines, and other shielded environments, such as high-rise buildings or collapsed structures, where conventional radio communication is limited.

(b) Activities

In order to carry out this section, the Director shall work with the private sector and appropriate Federal agencies to—

(1) perform a needs assessment to identify and evaluate the measurement, technical standards, and conformity assessment needs required to improve the operation and reliability of such emergency communication and tracking technologies;

(2) support the development of technical standards and conformance architecture to improve the operation and reliability of such emergency communication and tracking technologies; and

(3) incorporate and build upon existing reports and studies on improving emergency communications.

(c) Report

Not later than 18 months after January 4, 2011, the Director shall submit to Congress and make publicly available a report describing the assessment performed under subsection (b)(1) and making recommendations about research priorities to address gaps in the measurement, technical standards, and conformity assessment needs identified by the assessment.

(Pub. L. 111–358, title IV, §405, Jan. 4, 2011, 124 Stat. 4003.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the America COMPETES Reauthorization Act of 2010, also known as the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, and as part of the National Institute of Standards and Technology Authorization Act of 2010, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

Pub. L. 111–358, title IV, §409, Jan. 4, 2011, 124 Stat. 4004, provided that: "In this title [enacting this section and sections 273a and 278n–2 of this title, amending sections 274, 278g–1, 278g–2, 278g–2a, and 278k of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, and repealing section 1533 of this title and provisions set out as a note under section 278k of this title]:

"(1) **DIRECTOR**.—The term 'Director' means the Director of the National Institute of Standards and Technology.

"(2) **FEDERAL AGENCY**.—The term 'Federal agency' has the meaning given such term in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703).

"(3) **HIGH PERFORMANCE GREEN BUILDING**.—The term 'high performance green building' has the meaning given that term by section 401(13) of the Energy Independence and Security Act of 2009 [probably should be "2007"] (42 U.S.C. 17061(13))."

§278n–2. Green manufacturing and construction

The Director shall carry out a green manufacturing and construction initiative—

- (1) to develop accurate sustainability metrics and practices for use in manufacturing;
- (2) to advance the development of standards, including high performance green building standards, and the creation of an information infrastructure to communicate sustainability information about suppliers; and
- (3) to move buildings toward becoming high performance green buildings, including improving energy performance, service life, and indoor air quality of new and retrofitted buildings through validated measurement data.

(Pub. L. 111–358, title IV, §408, Jan. 4, 2011, 124 Stat. 4004.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the America COMPETES Reauthorization Act of 2010, also known as the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, and as part of the National Institute of Standards and Technology Authorization Act of 2010, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of "Director" and "high performance green building" as used in this section, see section 409 of Pub. L. 111–358, set out as a note under section 278n–1 of this title.

§278o. User fees

The Institute shall not implement a policy of charging fees with respect to the use of Institute research facilities by research associates in the absence of express statutory authority to charge such fees.

(Mar. 3, 1901, ch. 872, §30, as added Pub. L. 100–418, title V, §5161, Aug. 23, 1988, 102 Stat. 1450.)

§278p. Notice to Congress

(a) Notice of reprogramming

If any funds authorized for carrying out this chapter are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) Notice of reorganization

(1) Requirement

The Secretary shall provide notice to the Committees on Science and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 15 days before any major reorganization of any program, project, or activity of the Institute.

(2) "Major reorganization" defined

For purposes of this subsection, the term "major reorganization" means any reorganization of the Institute that involves the reassignment of more than 25 percent of the employees of the Institute.

(Mar. 3, 1901, ch. 872, §31, as added Pub. L. 105–309, §4(b), Oct. 30, 1998, 112 Stat. 2935.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§278q. Appropriations; availability

Appropriations to carry out the provisions of this chapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(Mar. 3, 1901, ch. 872, §32, formerly §18, as added Pub. L. 92–317, §3(a), June 22, 1972, 86 Stat.

235; amended Pub. L. 95–322, §2(b), July 21, 1978, 92 Stat. 395; Pub. L. 96–461, §10, Oct. 15, 1980, 94 Stat. 2052; renumbered §19, Pub. L. 99–574, §6(a), Oct. 28, 1986, 100 Stat. 3237; renumbered §20, Pub. L. 99–574, §8(a), Oct. 28, 1986, 100 Stat. 3238; renumbered §22, Pub. L. 100–235, §3(2), Jan. 8, 1988, 101 Stat. 1724; renumbered §32, Pub. L. 107–305, §8(a)(1), Nov. 27, 2002, 116 Stat. 2375.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 278h of this title prior to renumbering by Pub. L. 107–305.

Another section 32 of act Mar. 3, 1901, ch. 872, was renumbered section 35 and is set out as a Short Title note under section 271 of this title.

AMENDMENTS

1980—Pub. L. 96–461 substituted "Appropriations" for "(a) Appropriations" and struck out subsec. (b) which authorized appropriations to carry out provisions of this chapter, including the Working Capital Fund referred to in section 278b(a) of this title, but excluding section 278f of this title, of such sums as may be necessary for each of the fiscal years 1979 and 1980.

1978—Pub. L. 95–322 designated existing provisions as subsec. (a) and added subsec. (b).

§278r. Collaborative manufacturing research pilot grants

(a) Authority

(1) Establishment

The Director shall establish a pilot program of awards to partnerships among participants described in paragraph (2) for the purposes described in paragraph (3). Awards shall be made on a peer-reviewed, competitive basis.

(2) Participants

Such partnerships shall include at least—

- (A) 1 manufacturing industry partner; and
- (B) 1 nonindustry partner.

(3) Purpose

The purpose of the program under this section is to foster cost-shared collaborations among firms, educational institutions, research institutions, State agencies, and nonprofit organizations to encourage the development of innovative, multidisciplinary manufacturing technologies. Partnerships receiving awards under this section shall conduct applied research to develop new manufacturing processes, techniques, or materials that would contribute to improved performance, productivity, and competitiveness of United States manufacturing, and build lasting alliances among collaborators.

(b) Program contribution

Awards under this section shall provide for not more than one-third of the costs of a partnership. Not more than an additional one-third of such costs may be obtained directly or indirectly from other Federal sources.

(c) Applications

Applications for awards under this section shall be submitted in such manner, at such time, and containing such information as the Director shall require. Such applications shall describe at a minimum—

- (1) how each partner will participate in developing and carrying out the research agenda of the partnership;
- (2) the research that the grant would fund; and

(3) how the research to be funded with the award would contribute to improved performance, productivity, and competitiveness of the United States manufacturing industry.

(d) Selection criteria

In selecting applications for awards under this section, the Director shall consider at a minimum—

- (1) the degree to which projects will have a broad impact on manufacturing;
- (2) the novelty and scientific and technical merit of the proposed projects; and
- (3) the demonstrated capabilities of the applicants to successfully carry out the proposed research.

(e) Distribution

In selecting applications under this section the Director shall ensure, to the extent practicable, a distribution of overall awards among a variety of manufacturing industry sectors and a range of firm sizes.

(f) Duration

In carrying out this section, the Director shall run a single pilot competition to solicit and make awards. Each award shall be for a 3-year period.

(Mar. 3, 1901, ch. 872, §33, as added Pub. L. 110–69, title III, §3007(2), Aug. 9, 2007, 121 Stat. 591.)

§278s. Manufacturing USA

(a) Definitions

In this section:

(1) Agency head

The term "agency head" means the head of any Executive agency (as defined in section 105 of title 5), other than the Department of Defense.

(2) Regional innovation initiative

The term "regional innovation initiative" has the meaning given such term in section 3722(f)(1) of this title.

(b) Establishment of Manufacturing USA Program

(1) In general

The Secretary shall establish within the Institute a program to be known as the "Manufacturing United States of America Program" or the "Manufacturing USA Program" (referred to in this section as the "Program").

(2) Purposes of Program

The purposes of the Program are—

- (A) to improve the competitiveness of United States manufacturing and to increase the production of goods manufactured predominantly within the United States;
- (B) to stimulate United States leadership in advanced manufacturing research, innovation, and technology;
- (C) to facilitate the transition of innovative technologies into scalable, cost-effective, and high-performing manufacturing capabilities;
- (D) to facilitate access by manufacturing enterprises to capital-intensive infrastructure, including high-performance electronics and computing, and the supply chains that enable these technologies;
- (E) to accelerate the development of an advanced manufacturing workforce;
- (F) to facilitate peer exchange of and the documentation of best practices in addressing advanced manufacturing challenges;

(G) to leverage non-Federal sources of support to promote a stable and sustainable business model without the need for long-term Federal funding;

(H) to create and preserve jobs; and

(I) to contribute to the development of regional innovation initiatives across the United States.

(3) Support

The Secretary, acting through the Director, shall carry out the purposes set forth in paragraph

(2) by supporting—

(A) the Manufacturing USA Network established under subsection (b); and

(B) the establishment of Manufacturing USA institutes.

(4) Director

The Secretary shall carry out the Program through the Director.

(c) Establishment of Manufacturing USA Network

(1) In general

As part of the Program, the Secretary shall establish a network of Manufacturing USA institutes.

(2) Designation

The network established under paragraph (1) shall be known as the "Manufacturing United States of America Network" or the "Manufacturing USA Network" (referred to in this section as the "Network").

(d) Manufacturing USA institutes

(1) In general

For purposes of this section, a Manufacturing USA institute is an institute that—

(A) has been established by a person or group of persons to address challenges in advanced manufacturing and to assist manufacturers in retaining or expanding industrial production and jobs in the United States;

(B) has a predominant focus on a manufacturing process, novel material, enabling technology, supply chain integration methodology, or another relevant aspect of advanced manufacturing, such as nanotechnology applications, advanced ceramics, photonics and optics, composites, biobased and advanced materials, flexible hybrid technologies, tool development for microelectronics, food manufacturing, superconductors, advanced battery technologies, robotics, advanced sensors, quantum information science, supply chain water optimization, aeronautics and advanced materials, and graphene and graphene commercialization;

(C) has the potential—

(i) to improve the competitiveness of United States manufacturing, including key advanced manufacturing technologies such as nanotechnology, advanced ceramics, photonics and optics, composites, biobased and advanced materials, flexible hybrid technologies, tool development for microelectronics, food manufacturing, superconductors, advanced battery technologies, robotics, advanced sensors, quantum information science, supply chain water optimization, aeronautics and advanced materials, and graphene and graphene commercialization;

(ii) to accelerate non-Federal investment in advanced manufacturing production capacity in the United States; or

(iii) to enable the commercial application of new technologies or industry-wide manufacturing processes; and

(D) includes active participation among representatives from multiple industrial entities, research universities, community colleges, and other entities as appropriate, which may include industry-led consortia, career and technical education schools, Federal laboratories, State, local,

and Tribal governments, businesses, educational institutions, and nonprofit organizations.

(2) Activities

(A) Required activities

For purposes of this section, a Manufacturing USA institute is also an institute that carries out the following:

(i) Research, development, and demonstration projects, including proof-of-concept development and prototyping, to reduce the cost, time, or risk of commercializing new technologies and improvements in existing technologies, processes, products, and research and development of materials to solve precompetitive industrial problems with economic or national security implications.

(ii) Development and implementation of education, training, and workforce recruitment courses, materials, and programs addressing workforce needs through training and education programs at all appropriate education levels, including programs on applied engineering.

(iii) Development of innovative methodologies and practices for supply chain integration and introduction of new technologies into supply chains, as appropriate.

(iv) Outreach and engagement with small and medium-sized manufacturing enterprises, including women, minority, and veteran owned manufacturing enterprises, in addition to large manufacturing enterprises.

(v) Development of roadmaps or leveraging of existing roadmaps with respect to technology areas being pursued by that Manufacturing USA institute that take into account the research and development undertaken at other Manufacturing USA institutes and Federal agencies with respect to such areas.

(B) Permissible activities

In addition to the activities set forth under subparagraph (A), a Manufacturing USA institute may carry out such other activities as may be consistent with the purposes set forth under subsection (b)(2).

(3) Additional Manufacturing USA institutes

(A) In general

Except as provided in subparagraph (C), the National Additive Manufacturing Innovation Institute and other manufacturing institutes formally recognized as Manufacturing USA institutes pursuant to Federal law or executive actions, or under pending interagency review for such recognition as of December 16, 2014, shall be considered Manufacturing USA institutes for purposes of this section.

(B) Network participation

Except as provided in subparagraph (C), an institute that is substantially similar to an institute described by paragraphs (1) and (2) but does not meet every element of such description and does not receive financial assistance under subsection (e) may, upon request of the institute, be recognized as a Manufacturing USA institute by the Secretary for purposes of participation in the Network.

(C) Applicability

Effective beginning on December 20, 2019, an institute shall be treated as a Manufacturing USA institute under this section and subject to subsections (b)(2), (d), and (e) in the same manner and to the same extent as such provisions apply to a Manufacturing USA institute described by paragraphs (1) and (2) if such institute—

(i)(I) is, as of December 20, 2019, considered a Manufacturing USA institute under subparagraph (A) or recognized as a Manufacturing USA institute under subparagraph (B); and

(II) as of December 20, 2019, receives Federal financial assistance under subsection (e) or otherwise consistent with the purposes of this section;

- (ii) is under pending agency review for such recognition as of December 20, 2019; or
- (iii) is currently funded by the Department of Energy.

(e) Financial assistance to establish and support Manufacturing USA institutes

(1) Financial assistance authorized

Under the Program, the Secretary and the Secretary of Energy shall, and every other agency head may, award financial assistance to a person or group of persons to assist the person or group of persons in planning, establishing, or supporting a Manufacturing USA institute.

(2) Period and renewal of awards

(A) Initial periods

An award of financial assistance under paragraph (1) shall be awarded for an initial period of not less than 5 years and not more than 7 years.

(B) Renewal of awards

(i) Renewal authorized

An award of financial assistance under paragraph (1) may be renewed for additional periods, with each period not to exceed the duration of the initial period of the award, subject to a rigorous merit review.

(ii) Consideration of performance standards

In carrying out a rigorous merit review under clause (i) for renewal of an award under such clause for a Manufacturing USA institute, an agency head shall consider the extent to which the institute has made progress in meeting the standards of performance established pursuant to paragraph (5)(C).

(iii) Initial failure to meet performance standards

If, pursuant to a rigorous merit review under clause (i) for renewal of an award under such clause for a Manufacturing USA institute, an agency head finds that the institute does not meet the standards for performance established pursuant to paragraph (5)(C), the agency head shall—

- (I) notify the institute of any deficiencies in the performance of the institute; and
- (II) provide the institute one year to remedy such deficiencies.

(iv) Further failure to meet performance standards

If a Manufacturing USA institute fails to remedy a deficiency identified or to show significant improvement in performance during the 1-year period set forth under clause (iii)(II)—

- (I) the institute shall not be eligible for ¹ renewed award under clause (i); and
- (II) the agency head that conducted the review for renewal shall notify the institute of such ineligibility.

(v) Continuation of existing Manufacturing USA institutes

Notwithstanding clauses (i) through (iv), a Manufacturing USA institute already in existence or undergoing a renewal process prior to December 1, 2019—

- (I) may continue to receive support for the duration of the original funding award beginning on the date of establishment of that institute; and
- (II) shall be eligible for renewal of that funding pursuant to clause (i).

(3) Application for financial assistance

(A) In general

A person or group of persons seeking financial assistance under paragraph (1) shall submit to an agency head an application therefor at such time, in such manner, and containing such information as the agency head may require.

(B) Requirements

An application submitted under subparagraph (A) for an institute shall, at a minimum include the following:

- (i) A description of the specific sources and amounts of non-Federal financial support for the institute on the date financial assistance is sought.
- (ii) A description of the anticipated sources and amounts of non-Federal financial support during the period for which the institute could be eligible for continued Federal financial assistance under this section.

(4) Selection

(A) Competitive, merit review

In awarding financial assistance under paragraph (1), an agency head shall—

- (i) use a competitive, merit review process that includes review by a diverse group of individuals with relevant expertise from both the private and public sectors; and
- (ii) ensure that the technology focus of a Manufacturing USA institute does not substantially duplicate the technology focus of any other Manufacturing USA institute.

(B) Participation in process

(i) Prohibition on participation by political appointees

The review required by subparagraph (A)(i) may not include a review by a group of individuals that includes a political appointee.

(ii) Conflict of interest policies

Each agency head shall implement a conflict of interest policy that—

- (I) ensures public transparency and accountability in the process used under subparagraph (A)(i); and
- (II) requires full disclosure of any real or potential conflicts of interest on the parts of individuals that participate in the process used under subparagraph (A)(i).

(iii) Definition of political appointee

For purposes of this subparagraph, the term "political appointee" has the meaning given such term in section 714(h) of title 38.

(C) Considerations

In selecting a person or group of persons who submitted an application to an agency head under paragraph (3) for an award of financial assistance under paragraph (1) for a Manufacturing USA institute, the agency head shall consider, at a minimum, the following:

- (i) The potential of the Manufacturing USA institute to advance domestic manufacturing and the likelihood of economic impact, including the creation or preservation of jobs, in the predominant focus areas of the institute.
- (ii) The commitment of continued financial support, advice, participation, and other contributions from non-Federal sources, to provide leverage and resources to promote a stable and sustainable business model.
- (iii) Whether the financial support provided to the Manufacturing USA institute from non-Federal sources exceeds the requested Federal financial assistance.
- (iv) How the Manufacturing USA institute will increase the non-Federal investment in advanced manufacturing research in the United States.
- (v) How the Manufacturing USA institute will engage with small and medium-sized manufacturing enterprises to improve the capacity of such enterprises to commercialize new processes and technologies and to improve the domestic supply chain.
- (vi) How the Manufacturing USA institute will carry out educational and workforce activities that meet industrial needs related to the predominant focus areas of the institute.
- (vii) How the Manufacturing USA institute will advance economic competitiveness and generate substantial benefits to the Nation that extend beyond the direct return to participants

in the Program.

(viii) Whether the predominant focus of the Manufacturing USA institute is a manufacturing process, novel material, enabling technology, supply chain integration methodology, or other relevant aspect of advanced manufacturing that has not already been commercialized, marketed, distributed, or sold by another entity.

(ix) How the Manufacturing USA institute will strengthen and leverage the industrial, research, entrepreneurship, and other assets of a region.

(x) How the Manufacturing USA institute will encourage the education and training of veterans and individuals with disabilities.

(5) Performance measurement, transparency, and accountability

For each award of financial assistance under paragraph (1) by an agency head, the agency head shall—

(A) develop metrics to assess the effectiveness of the activities funded in making progress toward the purposes of the Program set forth under subsection (b)(2), including the effectiveness of Manufacturing USA institutes in advancing technology readiness levels or manufacturing readiness levels;

(B) establish standards for the performance of Manufacturing USA institutes that are based on the metrics developed under subparagraph (A); and

(C) for each Manufacturing USA institute supported by the award, 5 years after the initial award and every 5 years thereafter until Federal financial assistance under this subsection is discontinued, conduct an assessment of the institute to confirm whether the performance of the institute is meeting the standards for performance established under subparagraph (B).

(6) Collaboration

In awarding financial assistance under paragraph (1), an agency head, in coordination with the National Program Office, as the agency head considers appropriate, may collaborate with Federal departments and agencies whose missions contribute to or are affected by advanced manufacturing, including, as the agency head considers appropriate, the Department of Agriculture, the Department of Defense, the Department of Education, the Department of Energy, the Department of Labor, the Food and Drug Administration, the National Aeronautics and Space Administration, the National Institutes of Health, and the National Science Foundation.

(7) Matching funds and preferences

(A) In general

Except as provided in subparagraph (B), an agency head may not, with respect to a Manufacturing USA institute, award financial assistance under paragraph (1) or renew an award of financial assistance under paragraph (2) unless the agency head determines that non-Federal funding comprises 50 percent or more of the total amount of funding made available for the operation and support of the institute.

(B) Waivers

An agency head awarding financial assistance under paragraph (1) with respect to a Manufacturing USA institute may waive the requirements of subparagraph (A) in the case of satellite centers, large capital facilities, equipment purchases, workforce development, or general operations.

(8) Diversity preferences

In awarding financial assistance under paragraph (1) for planning or establishing a Manufacturing USA institute, an agency head shall give special consideration to Manufacturing USA institutes that—

(A) contribute to the geographic diversity of the Manufacturing USA Program;

(B) are located in an area with a low per capita income;

(C) are located in an area with a high proportion of socially disadvantaged residents; or

(D) are located in small and rural communities.

(f) Authority to award financial assistance for construction of test beds and specialized facilities

(1) In general

The Secretary may, acting through the Director, award financial assistance for the construction of test beds and specialized facilities by Manufacturing USA institutes established or supported under subsection (e) as the Secretary considers appropriate to carry out the purposes of the Program.

(2) Requirements

The Secretary shall exercise authority under paragraph (1) in a manner and with requirements consistent with paragraphs (3) through (8) of subsection (e).

(3) Priority

The Secretary shall establish preferences in selection criteria for proposals for financial assistance under this subsection from Manufacturing USA institutes that integrate as active members one or more covered entities as described in section 18971 of title 42.

(g) Grant program for public service activities for Manufacturing USA institutes without Federal funding

The Secretary may award a grant on a competitive basis to a Manufacturing USA institute that is not receiving financial assistance under subsection (e) to carry out workforce development, outreach to small- and medium-sized manufacturers, and other activities that—

- (1) are determined by the Secretary to be in the national interest; and
- (2) are unlikely to receive private sector financial support.

(h) Authorization of appropriations

(1) NIST Industrial Technical Services account

To the extent provided for in advance by appropriations Acts, the Secretary may use amounts appropriated to the Industrial Technical Services account to carry out this section as follows:

- (A) For each of the fiscal years 2015 through 2019, an amount not to exceed \$5,000,000.
- (B) For each of fiscal years 2020 through 2030, such amounts as may be necessary to carry out this section.

(2) Department of Energy

There are authorized to be appropriated to the Secretary of Energy for the provision of financial assistance under subsection (e) by the Department of Energy amounts as follows:

- (A) \$70,000,000 for each of fiscal years 2020, 2021, and 2022.
- (B) \$84,000,000 for each of fiscal years 2023 and 2024.

(i) National Program Office

(1) Establishment

The Secretary shall establish, within the Institute, the National Office of the Manufacturing USA Network (referred to in this section as the "National Program Office"), which shall oversee and carry out the Program.

(2) Functions

The functions of the National Program Office are—

- (A) to oversee the planning, management, and coordination of the Program;
- (B) to coordinate with and, as appropriate, enter into memorandums of understanding with Federal departments and agencies whose missions contribute to or are affected by advanced manufacturing, including the Department of Agriculture, the Department of Defense, the Department of Education, the Department of Energy, the Department of Labor, the Food and Drug Administration, the National Aeronautics and Space Administration, the National Institutes of Health, and the National Science Foundation, to carry out the purposes set forth under subsection (b)(2);

(C) to develop, not later than December 16, 2015, and update not less frequently than once every 3 years thereafter, a strategic plan to guide the Program, including a strategy for retaining domestic public benefits from Manufacturing USA institutes once Federal funding has been discontinued;

(D) to establish such procedures, processes, and criteria as may be necessary and appropriate to maximize cooperation and coordinate the activities of the Program with programs and activities of other Federal departments and agencies whose missions contribute to or are affected by advanced manufacturing;

(E) to establish a clearinghouse of public information related to the activities of the Program;

(F) to act as a convener of the Network;

(G) to work with Federal agencies that are not sponsoring or supporting a Manufacturing USA institute to explore and develop options for sponsoring or supporting a Manufacturing USA institute;

(H) to work with Federal agencies that are sponsoring or supporting a Manufacturing USA institute to develop and implement network-wide performance goals with measurable targets and timelines;

(I) to help develop pilot programs that may be implemented by the Manufacturing USA institutes to address specific purposes of the Program, including to accelerate technology transfer to the private sector and to develop entrepreneurship programs;

(J) to provide support services to promote workforce development activities, including the development of industry credentials;

(K) to identify and disseminate best practices for workforce education and training across the Network and further enhance collaboration among Manufacturing USA institutes in developing and implementing such practices;

(L) to collaborate with the Department of Labor, the Department of Education, industry, career and technical education schools, local community colleges, universities, and labor organizations to provide input, as appropriate, for the development of national certifications for advanced manufacturing workforce skills in the technology areas of the Manufacturing USA institutes; and

(M) to coordinate with Manufacturing USA institutes to develop best practices for the membership agreements and coordination of similar project solicitations.

(3) Recommendations

In developing and updating the strategic plan under paragraph (2)(C), the Secretary shall solicit recommendations and advice from a wide range of stakeholders, including industry, small and medium-sized manufacturing enterprises, research universities, community colleges, State, Tribal, and local governments, and other relevant organizations and institutions on an ongoing basis.

(4) Report to Congress

Upon completion, the Secretary shall transmit the strategic plan required under paragraph (2)(C) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(5) Hollings Manufacturing Extension Partnership

(A) In general

The Secretary shall ensure that the National Program Office leverages the capabilities of the Hollings Manufacturing Extension Partnership into Program planning to ensure—

(i) significant outreach to, participation of, and engagement of small- and medium-sized manufacturers in Manufacturing USA institutes across the entirety of the manufacturing supply chain; and

(ii) that the results of the Program, including technologies developed by the Program, reach small- and medium-sized manufacturers and that such entities have access to technical assistance, as appropriate, in deploying those technologies.

(B) Liaisons

The Secretary may provide financial assistance to a manufacturing extension center established as part of the Hollings Manufacturing Extension Partnership to support the purposes of the Program by providing services in one or more of the following areas:

- (i) Support services for small- and medium-sized manufacturers, that many include the designation of a liaison.
- (ii) Assistance with workforce development.
- (iii) Technology transfer for small and medium-sized manufacturers.
- (iv) Such other areas as the Secretary determines appropriate to support the purposes of the Program.

(6) Detailees

Any Federal Government employee may be detailed to the National Program Office without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

(7) Council for coordination of institutes

(A) Council

The National Program Office shall establish or designate a council of heads of any Manufacturing USA institute receiving Federal funding at any time to foster collaboration between Manufacturing USA institutes.

(B) Meetings

The council established or designated pursuant to subparagraph (A) shall meet not less frequently than twice each year.

(C) Duties of the council

The council established pursuant to subparagraph (A) shall assist the National Program Office in carrying out the functions of the National Program Office under paragraph (2).

(j) Reporting and auditing

(1) Annual reports to the Secretary

(A) In general

Not less frequently than once each year, each agency head that is providing financial assistance under subsection (e) shall—

- (i) require each recipient of such financial assistance submit to the agency head a report that describes the finances and performance of the Manufacturing USA institute with respect to which the financial assistance is awarded; and
- (ii) submit to the Secretary each report received by the agency head under clause (i).

(B) Elements

Each report submitted under subparagraph (A) shall include:

- (i) an accounting of expenditures of amounts awarded to the recipient under subsection (e); and
- (ii) consistent with the standards for performance established under subsection (e)(5)(B), a description of the performance of the Manufacturing USA institute with respect to—
 - (I) its goals, plans, financial support, and accomplishments; and
 - (II) how the Manufacturing USA institute has furthered the purposes set forth under subsection (b)(2).

(2) Annual reports to Congress

(A) In general

Not less frequently than once each year until December 31, 2030, the Secretary shall submit a report to Congress that describes the performance of the Program during the most recent 1-year period.

(B) Elements

Each report submitted under subparagraph (A) shall include, for the period covered by the report—

- (i) a summary and assessment of the reports received by the Secretary under paragraph (1);
- (ii) an accounting of the funds expended by the Secretary under the Program, including any waivers made under subsection (e)(7)(B);
- (iii) an assessment of the participation in, and contributions to, the Network by any Manufacturing USA institutes not receiving financial assistance under subsection (e); and
- (iv) an assessment of the Program with respect to meeting the purposes set forth under subsection (b)(2).

(3) Assessments by Comptroller General of the United States

(A) Assessments

Not less frequently than once every 3 years, the Comptroller General of the United States shall submit to Congress an assessment of the operation of the Program during the most recent 3-year period, including an assessment of the progress made towards achieving the goals specified in the national strategic plan for advanced manufacturing required under section 6622(b)(7) of title 42.

(B) Elements

Each assessment submitted under subparagraph (A) shall include, for the period covered by the report—

- (i) a review of the management, coordination, and industry utility of the Program;
- (ii) an assessment of the extent to which the Program has furthered the purposes set forth under subsection (b)(2);
- (iii) such recommendations for legislative and administrative action as the Comptroller General considers appropriate to improve the Program; and
- (iv) an assessment as to whether any prior recommendations for improvement made by the Comptroller General have been implemented or adopted.

(C) Final assessment

No later than December 31, 2030, the Comptroller General shall submit to Congress a final report regarding the overall success of the Program.

(k) Additional authorities

(1) Appointment of personnel and contracts

The Secretary may appoint such personnel and enter into such contracts, financial assistance agreements, and other agreements as the Secretary considers necessary or appropriate to carry out the Program, including support for research and development activities involving a Manufacturing USA institute.

(2) Transfer of funds

Of amounts available under the authority provided by subsection (g), the Secretary may transfer to other Federal agencies such sums as the Secretary considers necessary or appropriate to carry out the Program. No funds so transferred may be used to reimburse or otherwise pay for the costs of financial assistance incurred or commitments of financial assistance made prior to December 16, 2014.

(3) Authority of other agencies

In the event that the Secretary exercises the authority to transfer funds to another agency under paragraph (2), such agency may accept such funds to award and administer, under the same conditions and constraints applicable to the Secretary, all aspects of financial assistance awards under this section.

(4) Use of resources

In furtherance of the purposes of the Program, the Secretary may use, with the consent of a

covered entity and with or without reimbursement, the land, services, equipment, personnel, and facilities of such covered entity.

(5) Acceptance of resources

In addition to amounts appropriated to carry out the Program, the Secretary may accept funds, services, equipment, personnel, and facilities from any covered entity to carry out the Program, subject to the same conditions and constraints otherwise applicable to the Secretary under this section and such funds may only be obligated to the extent provided for in advance by appropriations Acts.

(6) Covered entities

For purposes of this subsection, a covered entity is any Federal department, Federal agency, instrumentality of the United States, State, local government, Tribal government, territory, or possession of the United States, or of any political subdivision thereof, or international organization, or any public or private entity or individual.

(7) Collaborations with other agencies

The Secretary shall collaborate with Federal agencies whose missions contribute to, or are affected by, advanced manufacturing to identify and leverage existing resources at such Federal agencies to assist Manufacturing USA institutes in carrying out the purposes of the Program set forth under subsection (b)(2). Such existing resources may include programs—

- (A) at the Department of Labor relating to labor and apprenticeships;
- (B) at the Economic Development Administration relating to regional innovation, such as the Regional Innovation Strategies program;
- (C) at the Department of Education relating to workforce development, education, training, and retraining;
- (D) at the Department of Defense relating to procurement and other authorities of the Department of Defense;
- (E) at the Food and Drug Administration relating to biopharmaceutical manufacturing;
- (F) at the National Science Foundation, including the Advanced Technological Education program;
- (G) at the National Aeronautics and Space Administration relating to procurement, workforce development, education, training, and retraining;
- (H) at the Department of Energy relating to development of clean energy technologies and other authorities of the Department of Energy;
- (I) at the Department of Agriculture relating to outreach to rural communities;
- (J) additional programs that the Secretary determines are appropriate to support the activities of existing Manufacturing USA institutes; and ²
- (K) additional programs that the Secretary determines are appropriate to support the activities of existing Manufacturing USA institutes.²

(l) Patents

Chapter 18 of title 35 shall apply to any funding agreement (as defined in section 201 of that title) awarded to new or existing Manufacturing USA institutes with respect to which financial assistance is awarded under subsection (e).

(m) References to prior names and terminology

Any reference in law, regulation, map, document, paper, or other record of the United States to the "Network for Manufacturing Innovation Program", the "Network for Manufacturing Innovation", "National Office of the Network for Manufacturing Innovation Program", or a "center for manufacturing innovation" shall be considered to be a reference to the Manufacturing USA Program, the Manufacturing USA Network, the National Office of the Manufacturing USA Network, or a Manufacturing USA institute, respectively.

(Mar. 3, 1901, ch. 872, §34, as added Pub. L. 113–235, div. B, title VII, §703(2), Dec. 16, 2014, 128 Stat. 2221; amended Pub. L. 116–92, div. A, title XVII, §1741(a), Dec. 20, 2019, 133 Stat. 1826;

Pub. L. 117–167, div. B, title II, §§10261, 10263(b)–(d), Aug. 9, 2022, 136 Stat. 1503, 1505, 1506; Pub. L. 117–263, div. E, title LIX, §5911, Dec. 23, 2022, 136 Stat. 3442.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 34 of act Mar. 3, 1901, ch. 872, was renumbered section 35 and is set out as a Short Title note under section 271 of this title.

AMENDMENTS

2022—Subsec. (e)(8). Pub. L. 117–167, §10261, added par. (8).

Subsecs. (f) to (h). Pub. L. 117–263, §5911, added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (h)(2)(C). Pub. L. 117–167, §10263(c), inserted ", including a strategy for retaining domestic public benefits from Manufacturing USA institutes once Federal funding has been discontinued" after "Program".

Subsec. (h)(2)(J). Pub. L. 117–167, §10263(d), inserted ", including the development of industry credentials" after "activities".

Subsec. (h)(7). Pub. L. 117–167, §10263(b), added par. (7).

Subsecs. (i) to (m). Pub. L. 117–263, §5911(1), redesignated subsecs. (h) to (l) as (i) to (m), respectively.

2019—Pub. L. 116–92 amended section generally. Prior to amendment, section related to Network for Manufacturing Innovation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

COORDINATION WITH HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP CENTERS

Pub. L. 116–283, div. H, title XCIV, §9415, Jan. 1, 2021, 134 Stat. 4822, provided that: "Notwithstanding section 34(d)(2)(A)(iv) of the National Institute for [of] Standards and Technology Act (15 U.S.C. 278s(d)(2)(A)(iv)), each Manufacturing USA Institute (established under subsection (d) of such section) shall, as appropriate, contract with a Hollings Manufacturing Extension Partnership Center (established under section 25 of such Act [15 U.S.C. 278k]) in each State in which such Institute provides services, either directly or through another such Center, to provide defense industrial base-related outreach, technical assistance, workforce development, and technology transfer assistance to small and medium-sized manufacturers. No Center shall charge in excess of its standard rate for such services. Funds received by a Center through such a contract shall not constitute financial assistance under section 25(e) of such Act."

EXPANSION OF MANUFACTURING USA NETWORK

Pub. L. 116–92, div. A, title XVII, §1741(b), Dec. 20, 2019, 133 Stat. 1837, provided that: "Subject to the availability of appropriations, the Secretary of Commerce shall take such actions as may be necessary to increase the number of Manufacturing USA institutes that participate in the Manufacturing USA Network."

FINDINGS

Pub. L. 113–235, div. B, title VII, §702, Dec. 16, 2014, 128 Stat. 2220, provided that: "Congress finds the following:

"(1) In 2012, manufacturers contributed \$2.03 trillion to the economy, or 1/8 of United States Gross Domestic Product.

"(2) For every \$1.00 spent in manufacturing, another \$1.32 is added to the economy, the highest multiplier effect of any economic sector.

"(3) Manufacturing supports an estimated 17,400,000 jobs in the United States—about 1 in 6 private-sector jobs. More than 12,000,000 Americans (or 9 percent of the workforce) are employed directly in manufacturing.

"(4) In 2012, the average manufacturing worker in the United States earned \$77,505 annually, including pay and benefits. The average worker in all industries earned \$62,063.

"(5) Taken alone, manufacturing in the United States would be the 8th largest economy in the world.

"(6) Manufacturers in the United States perform two-thirds of all private-sector research and development in the United States, driving more innovation than any other sector."

¹ So in original. Probably should be followed by "a".

² So in original. Subpars. (J) and (K) are identical and the words "additional programs" do not follow from introductory provisions.

§278t. Advanced communications research activities

(a) Advanced communications research

(1) In general

The Director, in consultation with the Assistant Secretary for Communications and Information, the Director of the National Science Foundation, and heads of other Federal agencies, as appropriate, shall carry out a program of measurement research for advanced communications technologies.

(2) Research areas

Research areas may include—

(A) radio frequency emissions and interference, including technologies and techniques to mitigate such emissions and interference;

(B) advanced antenna arrays and artificial intelligence systems capable of operating advanced antenna arrays;

(C) artificial intelligence systems to enable internet of things networks, immersive technology, and other advanced communications technologies;

(D) network sensing and monitoring technologies;

(E) technologies to enable spectrum flexibility and agility;

(F) optical and quantum communications technologies;

(G) security of advanced communications systems;

(H) public safety communications;

(I) resilient internet of things applications for advanced manufacturing; and

(J) other research areas determined necessary by the Director.

(3) Testbeds

In coordination with the Assistant Secretary for Communications and Information, the private sector, and other Federal agencies as appropriate, the Director may develop and manage testbeds for research and development of advanced communications technologies, avoiding duplication of existing testbeds run by other agencies or the private sector.

(4) Outreach

In carrying out the activities under this subsection, the Director shall seek input from other Federal agencies and from private sector stakeholders, on an ongoing basis, to help inform research and development priorities, including through workshops and other multistakeholder activities.

(5) Technical roadmaps

In carrying out the activities under this subsection, the Director shall convene industry, institutions of higher education, nonprofit organizations, Federal laboratories, and other Federal agencies engaged in advanced communications research and development to develop, and periodically update, coordinated technical roadmaps for advanced communications research in priority areas, such as those described in paragraph (2).

(b) National Advanced Spectrum and Communications Test Network

(1) In general

The Director, in coordination with the Administrator of the National Telecommunications and Information Administration and heads of other Federal agencies, as appropriate, shall operate a

national network of government, academic, and commercial test capabilities and facilities to be known as the National Advanced Spectrum and Communications Test Network (referred to in this section as "NASCTN").

(2) Purposes

NASCTN shall be for the purposes of facilitating and coordinating the use of intellectual capacity, modeling and simulation, laboratory facilities, and test facilities to meet national spectrum interests and challenges, including—

(A) measurements and analyses of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility;

(B) conducting research and analysis in the general field of telecommunications sciences in support of the Institute's mission and in support of other Government agencies;

(C) developing methodologies for testing, measuring, and setting guidelines for interference;

(D) conducting interference tests to better understand the impact of current and proposed Federal and commercial spectrum activities;

(E) conducting research and testing to improve spectrum interference tolerance, flexibility, agility, and interference mitigation methods; and

(F) other activities as determined necessary by the Director.

(Mar. 3, 1901, ch. 872, §35, as added Pub. L. 117–167, div. B, title II, §10230(2), Aug. 9, 2022, 136 Stat. 1482.)

§278u. Xylazine detection and analysis

(a) Definitions

In this section:

(1) Director

The term "Director" means the Director of the National Institute of Standards and Technology.

(2) Federal laboratory

The term "Federal laboratory" has the meaning given such term in section 3703 of this title.

(3) Institute

The term "Institute" means the National Institute of Standards and Technology.

(4) Institution of higher education

The term "institution of higher education" has the meaning given such term in section 1001 of title 20.

(5) Nonprofit organization

The term "nonprofit organization" means an organization described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title.

(6) Xylazine

The term "xylazine" means the nonopioid tranquilizer methyl benzene compound frequently used in veterinary medicine as an emetic and sedative with analgesic and muscle relaxant properties.

(b) In general

The Director shall—

(1) support intramural basic measurement science and research of the Institute to advance—

(A) analytical methods to identify, understand, differentiate, and categorize substances containing xylazine, novel synthetic opioids, or other new psychoactive substances;

(B) measurement technologies to shorten analysis timelines and enhance narcotic and opioid detection and analysis capabilities;

(C) new data tools, techniques, and processes to identify and publicly disclose relevant information concerning substances containing xylazine, novel synthetic opioids, or other new psychoactive substances; and

(D) such other areas as the Director determines to be critical to the development and deployment of technologies to measure and analyze the presence of xylazine, novel synthetic opioids, and other new psychoactive substances;

(2) support activities to inform and expand the development of near-real time spectrometry capabilities regarding xylazine, novel synthetic opioids, and other new psychoactive substances;

(3) convene and consult with organizations engaged in the analysis of new psychoactive substances to develop coordinated strategies and voluntary best practices for the safe handling, transport, data-sharing, and analysis of substances containing xylazine, novel synthetic opioids, or other new psychoactive substances, including—

(A) the Drug Enforcement Administration;

(B) the Centers for Disease Control and Prevention;

(C) the National Institute on Drug Abuse;

(D) Federal laboratories;

(E) States and territories;

(F) State fusion centers;

(G) the private sector;

(H) intergovernmental organizations;

(I) institutions of higher education,¹ and

(J) nonprofit organizations;

(4) establish or expand collaborative partnerships or consortia with other government agencies and persons engaged in related research and development, such as institutions of higher education, Federal laboratories, public health agencies, intergovernmental organizations, and the private sector, to enhance narcotic and opioid detection and analysis capabilities regarding xylazine, novel synthetic opioids, and other new psychoactive substances; and

(5) encourage graduate and post-graduate research to include detection and identification of xylazine and other new psychoactive substances in relevant course studies when practicable.

(c) Controls

In carrying out activities under this section, the Director shall ensure proper security controls are implemented to protect sensitive information, as the Director considers appropriate and consistent with applicable provisions of law.

(d) Report

Not later than 1 year after December 19, 2023, the Director shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the implementation of this section. Such report may include recommendations for legislative action to improve the ability of the Director to carry out this section.

(Pub. L. 118–23, §2, Dec. 19, 2023, 137 Stat. 125.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Testing, Rapid Analysis, and Narcotic Quality Research Act of 2023, also known as the TRANQ Research Act of 2023, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

¹ So in original. The comma probably should be a semicolon.

§279. Absence of Director

In the case of the absence of the Director of the National Institute of Standards and Technology the Secretary of Commerce may designate some officer of said Institute to perform the duties of the director during his absence.

(Mar. 4, 1911, ch. 237, §1, 36 Stat. 1231; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "Bureau of Standards" and "Institute" for "bureau".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

§§280, 281. Repealed. Pub. L. 100-418, title V, §5113, Aug. 23, 1988, 102 Stat. 1432

Section 280, acts July 16, 1914, ch. 141, §1, 38 Stat. 502; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783, related to promotion of apprentices in National Bureau of Standards.

Section 281, acts Mar. 4, 1913, ch. 150, §1, 37 Stat. 945; 1967 Reorg. Plan No. 3, §401, eff. Aug. 11, 1967, 32 F.R. 11669, 81 Stat. 948; Dec. 24, 1973, Pub. L. 93-198, title IV, §421, title VII, §711, 87 Stat. 789, 818, related to testing of building and other structural materials for District of Columbia.

§281a. Structural failures

The National Institute of Standards and Technology, on its own initiative but only after consultation with local authorities, may initiate and conduct investigations to determine the causes of structural failures in structures which are used or occupied by the general public. No part of any report resulting from such investigation, or from an investigation under the National Construction Safety Team Act [15 U.S.C. 7301 et seq.], shall be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.

(Pub. L. 99-73, §7, July 29, 1985, 99 Stat. 173; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 107-231, §13, Oct. 1, 2002, 116 Stat. 1476.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Construction Safety Team Act, referred to in text, is Pub. L. 107-231, Oct. 1, 2002, 116 Stat. 1471, which is classified generally to chapter 99 [§7301 et seq.] of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

2002—Pub. L. 107–231 inserted ", or from an investigation under the National Construction Safety Team Act," after "from such investigation".

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

§282. Repealed. Pub. L. 100–418, title V, §5113, Aug. 23, 1988, 102 Stat. 1432

Section, act May 14, 1930, ch. 275, §1, 46 Stat. 327, related to establishment and purpose of a national hydraulic laboratory and studies of Federal and State projects related thereto.

§282a. Assessment of emerging technologies requiring research in metrology

The Board of Assessment of the National Institute of Standards and Technology shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Institute abreast of its mission, including process and quality control, engineering databases, advanced materials, electronics and fiber optics, bioprocess engineering, and advanced computing concepts. Such review shall include estimates of the cost of the required effort, required staffing levels, appropriate interaction with industry, including technology transfer, and the period over which the research will be required.

(Pub. L. 100–418, title V, §5163(a), Aug. 23, 1988, 102 Stat. 1450.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 5163(a) of Pub. L. 100–418. Section 5163(b)–(d) of Pub. L. 100–418 enacted provisions set out as a note under section 272 of this title, amended section 3710 of this title, and enacted section 1533 of this title, respectively.

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 282a, Pub. L. 99–574, §7, Oct. 28, 1986, 100 Stat. 3237, consisted of provisions substantially identical to this section.

§283. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 655, 656

Section, acts July 20, 1949, ch. 354, title III, §301, 63 Stat. 468; Sept. 6, 1950, ch. 896, ch. III, title III, §301, 64 Stat. 628, related to appointment of personnel observing radio propagation phenomena in Arctic Region.

§284. Omitted

EDITORIAL NOTES

CODIFICATION

Section, acts Oct. 22, 1951, ch. 533, title III, §301, 65 Stat. 593; Sept. 6, 1950, ch. 896, ch. III, title III, §301, 64 Stat. 628; July 20, 1949, ch. 354, title III, §301, 63 Stat. 468, which related to transfer of materials,

etc., to Bureau of ionosphere observation by Departments of the Army, Navy, and Air Force, was from the Department of Commerce Appropriation Act, 1952, and has not been repeated in subsequent appropriation acts.

§§285, 286. Repealed. Pub. L. 85–890, §3, Sept. 2, 1958, 72 Stat. 1712

Section 285, act July 21, 1950, ch. 485, §1, 64 Stat. 370, related to functions and activities of National Bureau of Standards for which funds should be available. See section 278e of this title.

Section 286, act July 21, 1950, ch. 485, §2, 64 Stat. 371, related to construction and improvement of buildings and facilities. See section 278d of this title.

CHAPTER 7A—STANDARD REFERENCE DATA PROGRAM

Sec.

290. Congressional declaration of policy.

290a. Definitions.

290b. Collection, compilation, critical evaluation, publication and dissemination of standard reference data.

290c. Standards, criteria, and procedures for preparation and publication of standard reference data; publication in Federal Register.

290d. Sale of standard reference data; cost recovery; proceeds subject to National Institute of Standards and Technology.

290e. United States copyright and renewal rights.

290f. Authorization of appropriations.

§290. Congressional declaration of policy

The Congress hereby finds and declares that reliable standardized scientific and technical reference data are of vital importance to the progress of the Nation's science and technology. It is therefore the policy of the Congress to make critically evaluated reference data readily available to scientists, engineers, and the general public. It is the purpose of this chapter to strengthen and enhance this policy.

(Pub. L. 90–396, §1, July 11, 1968, 82 Stat. 339.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 90–396, §8, July 11, 1968, 82 Stat. 340, provided that: "This Act [enacting this chapter] may be cited as the 'Standard Reference Data Act'."

§290a. Definitions

For the purposes of this chapter:

(1) Standard reference data

The term "standard reference data" means data that is—

(A) either—

(i) quantitative information related to a measurable physical, or chemical, or biological property of a substance or system of substances of known composition and structure;

(ii) measurable characteristics of a physical artifact or artifacts;

(iii) engineering properties or performance characteristics of a system; or

(iv) 1 or more digital data objects that serve—

- (I) to calibrate or characterize the performance of a detection or measurement system; or
- (II) to interpolate or extrapolate, or both, data described in subparagraph (A) through (C); ¹ and

(B) that is critically evaluated as to its reliability under section 290b of this title.

(2) Secretary

The term "Secretary" means the Secretary of Commerce.

(Pub. L. 90–396, §2, July 11, 1968, 82 Stat. 340; Pub. L. 114–329, title I, §108, Jan. 6, 2017, 130 Stat. 2987.)

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 114–329 amended section generally. Prior to amendment, text read as follows: "For the purposes of this chapter—

"(a) The term 'standard reference data' means quantitative information, related to a measurable physical or chemical property of a substance or system of substances of known composition and structure, which is critically evaluated as to its reliability under section 290b of this title.

"(b) The term 'Secretary' means the Secretary of Commerce."

¹ *So in original.*

§290b. Collection, compilation, critical evaluation, publication and dissemination of standard reference data

The Secretary is authorized and directed to provide or arrange for the collection, compilation, critical evaluation, publication, and dissemination of standard reference data. In carrying out this program, the Secretary shall, to the maximum extent practicable, utilize the reference data services and facilities of other agencies and instrumentalities of the Federal Government and of State and local governments, persons, firms, institutions, and associations, with their consent and in such a manner as to avoid duplication of those services and facilities. All agencies and instrumentalities of the Federal Government are encouraged to exercise their duties and functions in such manner as will assist in carrying out the purpose of this chapter. This section shall be deemed complementary to existing authority, and nothing herein is intended to repeal, supersede, or diminish existing authority or responsibility of any agency or instrumentality of the Federal Government.

(Pub. L. 90–396, §3, July 11, 1968, 82 Stat. 340.)

§290c. Standards, criteria, and procedures for preparation and publication of standard reference data; publication in Federal Register

To provide for more effective integration and coordination of standard reference data activities, the Secretary, in consultation with other interested Federal agencies, shall prescribe and publish in the Federal Register such standards, criteria, and procedures for the preparation and publication of standard reference data as may be necessary to carry out the provisions of this chapter.

(Pub. L. 90–396, §4, July 11, 1968, 82 Stat. 340.)

§290d. Sale of standard reference data; cost recovery; proceeds subject to National Institute of Standards and Technology

Standard reference data conforming to standards established by the Secretary may be made available and sold by the Secretary or by a person or agency designated by him. To the extent practicable and appropriate, the prices established for such data may reflect the cost of collection, compilation, evaluation, publication, and dissemination of the data, including administrative expenses; and the amounts received shall be subject to the Act of March 3, 1901, as amended [15 U.S.C. 271 et seq.].

(Pub. L. 90-396, §5, July 11, 1968, 82 Stat. 340.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of March 3, 1901, as amended, referred to in text, means act Mar. 3, 1901, ch. 872, 31 Stat. 1449, which is classified generally to chapter 7 (§271 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

§290e. United States copyright and renewal rights

(a) Notwithstanding the limitations under section 105 of title 17, the Secretary may secure copyright and renewal thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this chapter, and may authorize the reproduction and publication thereof by others.

(b) The publication or republication by the Government under this chapter, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such material without the consent of the copyright proprietor.

(Pub. L. 90-396, §6, July 11, 1968, 82 Stat. 340; Pub. L. 94-553, §105(f), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 107-273, div. C, title III, §13211(b), Nov. 2, 2002, 116 Stat. 1910.)

EDITORIAL NOTES

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, §13211(b)(2), substituted "Notwithstanding the limitations under section 105 of title 17," for "Notwithstanding the limitations contained in section 105 of title 17,".

Pub. L. 107-273, §13211(b)(1), made technical amendment to directory language of Pub. L. 94-553. See 1976 Amendment note below.

1976—Subsec. (a). Pub. L. 94-553, as amended by Pub. L. 107-273, §13211(b)(1), substituted "section 105 of title 17" for "section 8 of title 17".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

§290f. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, \$1.86 million for the fiscal year ending June 30, 1969. Notwithstanding the provisions of any other law, no appropriations for any fiscal year may be made for the purpose of this chapter after fiscal year 1969 unless previously authorized by legislation hereafter enacted by the Congress.

(Pub. L. 90-396, §7, July 11, 1968, 82 Stat. 340.)

CHAPTER 8—FALSELY STAMPED GOLD OR SILVER OR GOODS MANUFACTURED THEREFROM

Sec.	
291.	Stamping with words "United States assay", etc., unlawful.
292.	Forfeiture.
293.	Penalty for infraction.
294.	Importation or transportation of falsely marked gold or silver ware prohibited.
295.	Standard of fineness of gold articles; deviation.
296.	Standard of fineness of silver articles; deviation.
297.	Stamping plated articles.
298.	Violations of law.
299.	Definitions.
300.	Application of State laws.

§291. Stamping with words "United States assay", etc., unlawful

It shall be unlawful for any person, partnership, association, or corporation engaged in commerce among the several States, Territories, District of Columbia, and possessions of the United States, or with any foreign country, to stamp any gold, silver, or goods manufactured therefrom, and which are intended and used in such commerce, with the words "United States assay", or with any words, phrases, or devices calculated to convey the impression that the United States Government has certified to the fineness or quality of such gold or silver, or of the gold or silver contained in any of the goods manufactured therefrom. Each and every such stamp shall constitute a separate offense.

(Feb. 21, 1905, ch. 720, §1, 33 Stat. 732.)

§292. Forfeiture

Any gold, silver, or goods manufactured therefrom after February 21, 1905, bearing any of the stamps, words, phrases, or devices prohibited to be used under section 291 of this title, and being in the course of transportation from one State to another, or to or from a Territory, the District of Columbia, or possessions of the United States, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Feb. 21, 1905, ch. 720, §3, 33 Stat. 732.)

§293. Penalty for infraction

Every person, partnership, association, or corporation violating the provisions of sections 291 to 293 of this title, and every officer, director, or managing agent of such partnership, association, or corporation having knowledge of such violation and directly participating in such violation or consenting thereto, shall be deemed guilty of a misdemeanor, and, upon conviction, be punished with a fine of not more than \$5,000 or imprisonment for not more than one year, or both, at the discretion of the court.

(Feb. 21, 1905, ch. 720, §2, 33 Stat. 732.)

§294. Importation or transportation of falsely marked gold or silver ware prohibited

It shall be unlawful for any person, firm, corporation, or association, being a manufacturer of or

wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, or for any officer, manager, director, or agent of such firm, corporation, or association to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, or to deposit or cause to be deposited in the United States mails for transmission thereby, or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States, or the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, or to transport or cause to be transported from one State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, any article of merchandise manufactured after June 13, 1907, and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections 295 and 296 of this title.

(June 13, 1906, ch. 3289, §1, 34 Stat. 260.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-450, §1, Oct. 1, 1976, 90 Stat. 1501, provided: "That this Act [amending section 295 of this title and enacting provisions set out as a note under section 295 of this title] may be cited as the 'Gold Labeling Act of 1976'."

SHORT TITLE

Act June 13, 1906, ch. 3289, which enacted this section and sections 295 to 300 of this title, is popularly known as the "Jewelers' Liability Act (Gold and Silver Articles)" and also as the "National Gold and Silver Stamping Act of 1906".

§295. Standard of fineness of gold articles; deviation

In the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of such gold or alloy shall not be less by more than three one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed: *Provided*, That in any test for the ascertainment of the fineness of any article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article: *Provided further*, That, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold or of its alloys contained in an article mentioned in this section, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article, than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which

such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(June 13, 1906, ch. 3289, §2, 34 Stat. 260; Pub. L. 94-450, §2, Oct. 1, 1976, 90 Stat. 1501.)

EDITORIAL NOTES

AMENDMENTS

1976—Pub. L. 94-450 substituted "three one-thousandth parts" for "one-half of one carat", "in an article mentioned in this section" for "in such article", "than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article," for "than one carat", struck out "in the case of any article mentioned in this section" which followed "*Provided, further, That*", and exception which permitted the actual fineness of gold or its alloys used for watchcases and flatware to be not less by more than three one-thousandth parts the fineness indicated by stamp or label.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-450, §3, Oct. 1, 1976, 90 Stat. 1501, provided that: "The amendments made by section 2 of this Act [amending this section] shall take effect five years after the date of enactment of this Act [Oct. 1, 1976] and shall not apply with respect to any article of merchandise which is sold by any manufacturer or importer before the effective date of such amendments."

§296. Standard of fineness of silver articles; deviation

In the case of articles of merchandise made in whole or in part of silver or any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of the silver or alloy thereof of which such article is wholly or partly composed shall not be less by more than four one-thousandth parts than the actual fineness indicated by any mark (other than the word "sterling" or the word "coin") stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed; and that no such article or tag, card, or label attached thereto, or box, package, cover, or wrapper in which such article is incased or inclosed shall be marked, stamped, branded, engraved, or printed with the word "sterling" or "sterling silver" or any colorable imitation thereof, unless such article or parts thereof purporting to be silver contains nine hundred and twenty-five one-thousandth parts pure silver; and that no such article, tag, card, label, box, package, cover, or wrapper shall be marked, stamped, branded, engraved, or printed with the words "coin" or "coin silver" or colorable imitation thereof unless such article or parts thereof purporting to be silver contains nine hundred one-thousandth parts pure silver: *Provided*, That in the case of all such articles whose fineness is indicated by the word "sterling" or the word "coin" there shall be allowed a divergence in the fineness of four one-thousandth parts from the foregoing standards: *Provided*, That in any test for the ascertainment of the fineness of any such article mentioned in this section according to the foregoing standards the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of such article: *Provided further*, That in the case of any article mentioned in this section, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of silver or of its alloys contained in such article, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such silver, alloys, and solder being assayed as one piece), shall not be less by more than ten one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such

article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(June 13, 1906, ch. 3289, §3, 34 Stat. 261.)

§297. Stamping plated articles

(a) Words "sterling" or "coin" forbidden

In the case of articles of merchandise made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plating, covering, or sheet composed of gold or silver, or of an alloy of either of said metals, and known in the market as rolled gold plate, gold plate, gold filled, silver plate, or gold or silver electroplate, or by any similar designation, so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is encased or inclosed, shall be stamped, branded, engraved, or imprinted with any word or mark usually employed to indicate the fineness of gold, unless such word or mark be accompanied by other words, plainly indicating that such article or part thereof is made of rolled gold plate, gold plate, or gold electroplate, or is gold filled, as the case may be, and no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with the word "sterling" or the word "coin", either alone or in conjunction with other words or marks.

(b) Identifying trademark

Whenever any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of this title—

(1) applies or causes to be applied to any article of merchandise intended for sale or customarily sold as a complete product to consumers in any State, by stamping, branding, engraving, or otherwise, any quality mark or stamp indicating or purporting to indicate that such article is made in whole or in part of gold or silver or of an alloy of either such metal; or

(2) imports into any State any such article of merchandise bearing any such quality mark or stamp which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either such metal,

such person, firm, corporation, or association, before depositing any such article manufactured or imported after six months after the effective date of this Act in the United States mails, or causing such article to be so deposited, for transmission thereby, or delivering such article or causing such article to be delivered to any common carrier for transportation from one State to any other State, or transporting such article or causing such article to be transported from one State to any other State, shall—

(A) Apply or cause to be applied to that article a trademark of such persons, which has been duly registered or applied for registration under the laws of the United States within thirty days after an article bearing the trademark is placed in commerce or imported into the United States, or the name of such person; and

(B) if such article of merchandise is composed of two or more parts which are complete in themselves but which are not identical in quality, and any one of such parts bears such a quality mark or stamp, apply or cause to be applied to each other part of that article of merchandise a quality mark or stamp of like pattern and size disclosing the quality of that other part.

Each identifying trademark or name applied to any article of merchandise in compliance with clause (A) of this subsection shall be applied to that article by the same means as that used in

applying the quality mark or stamp appearing thereon, in type or lettering at least as large as that used in such quality mark or stamp, and in a position as close as possible to that quality mark or stamp. For the purposes of this subsection, the term "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(June 13, 1906, ch. 3289, §4, 34 Stat. 261; Pub. L. 87-354, §1, Oct. 4, 1961, 75 Stat. 775; Pub. L. 91-366, §1(e), July 31, 1970, 84 Stat. 691.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (b), as the first day of the third month beginning after Oct. 4, 1961, see Effective Date of 1961 Amendment note set out under this section.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-366 struck out reference to the trademark of a firm, corporation or association in cl. (A).

1961—Pub. L. 87-354 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-366, §4, July 31, 1970, 84 Stat. 691, provided that: "This Act [amending this section and sections 298 and 299 of this title and enacting provisions set out below] shall take effect three months after enactment [July 31, 1970]."

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-354, §2, Oct. 4, 1961, 75 Stat. 776, provided that: "The amendments made by this Act [amending this section] shall take effect on the first day of the third month beginning after the date of enactment of this Act [Oct. 4, 1961]."

SEPARABILITY

Pub. L. 91-366, §2, July 31, 1970, 84 Stat. 691, provided that: "If any provision of this Act [see Effective Date of 1970 Amendment note above] or any amendment made thereby, or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act or amendment and the application of the remaining provisions of the Act or amendment to any person shall not be affected thereby."

CONSTRUCTION OF 1970 AMENDMENT

Pub. L. 91-366, §3, July 31, 1970, 84 Stat. 691, provided that: "The provisions of this Act [see Effective Date of 1970 Amendment note above] and amendments made thereby shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States."

§298. Violations of law

(a) Criminal prosecutions; penalties; jurisdiction

Each and every person, firm, corporation, or association, being a manufacturer of or a wholesale or retail dealer in gold or silver jewelry, gold ware, silver goods, or silverware, who or which shall knowingly violate any of the provisions of sections 294 to 300 of this title, and every officer, manager, director, or managing agent of any such corporation or association having knowledge of such violation and directly participating in such violation or consenting thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which has been conducted the transportation of the article in respect to which such violation has been committed, shall be punished by a fine of not more than \$500 or imprisonment for not more than three months, or both, at the discretion of the court. Whenever the offense is begun in one

jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

(b) Suits by competitors, customers, or subsequent purchasers for injunctive relief; damages and costs

Any competitor, customer, or competitor of a customer of any person in violation of section 294, 295, 296, or 297 of this title, or any subsequent purchaser of an article of merchandise which has been the subject of a violation of section 294, 295, 296, or 297 of this title, shall be entitled to injunctive relief restraining further violation of sections 294 to 300 of this title and may sue therefor in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and shall recover damages and the cost of suit, including a reasonable attorney's fee.

(c) Suits by jewelry trade associations for injunctive relief; damages and costs

Any duly organized and existing jewelry trade association shall be entitled to injunctive relief restraining any person in violation of section 294, 295, 296, or 297 of this title from further violation of sections 294 to 300 of this title and may sue therefor as the real party in interest in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and if successful shall recover the cost of suit, including a reasonable attorney's fee. If the court determines that the action has been brought frivolously, for purposes of harassment, or in implementation of any scheme in restraint of trade, it may award punitive damages to the defendant.

(d) Award of costs to defendant

Any defendant against whom a civil action is brought under the provisions of sections 294 to 300 of this title shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of sections 294 to 300 of this title.

(e) Jurisdiction of civil actions

The district courts shall have exclusive original jurisdiction of any civil action arising under the provisions of sections 294 to 300 of this title.

(June 13, 1906, ch. 3289, §5, 34 Stat. 262; Pub. L. 91-366, §1(a), (b), July 31, 1970, 84 Stat. 690.)

EDITORIAL NOTES

AMENDMENTS

1970—Pub. L. 91-366 designated existing provisions as subsec. (a) and added subsecs. (b) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-366 effective three months after July 31, 1970, see section 4 of Pub. L. 91-366, set out as a note under section 297 of this title.

SEPARABILITY

For separability provision of Pub. L. 91-366, see section 2 of Pub. L. 91-366, set out as a note under section 297 of this title.

CONSTRUCTION OF 1970 AMENDMENT

Amendment by Pub. L. 91-366 to be held to be in addition to and not in substitution for or limitation of the provisions of any other Act of the United States, see section 3 of Pub. L. 91-366, set out as a note under section 297 of this title.

§299. Definitions

(a) The expression "article of merchandise" as used in sections 294 to 300 of this title shall signify any goods, wares, works of art, commodity, or other thing which may be lawfully kept or offered for sale.

(b) The term "person" means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of sections 294 to 300 of this title.

(c) The term "jewelry trade association" means an organization, consisting primarily of persons actively engaged in the jewelry or a related business, the purposes and activities of which are primarily directed to the improvement of business conditions in the jewelry or related businesses.

(June 13, 1906, ch. 3289, §6, 34 Stat. 262; Pub. L. 91-366, §1(c), (d), July 31, 1970, 84 Stat. 690.)

EDITORIAL NOTES

AMENDMENTS

1970—Pub. L. 91-366 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91-366 effective three months after July 31, 1970, see section 4 of Pub. L. 91-366, set out as a note under section 297 of this title.

SEPARABILITY

For separability provision of Pub. L. 91-366, see section 2 of Pub. L. 91-366, set out as a note under section 297 of this title.

CONSTRUCTION OF 1970 AMENDMENT

Amendment by Pub. L. 91-366 to be held to be in addition to and not in substitution for or limitation of the provisions of any other Act of the United States, see section 3 of Pub. L. 91-366, set out as a note under section 297 of this title.

§300. Application of State laws

All articles of merchandise to which sections 294 to 300 of this title apply which shall have been transported into any State, Territory, District, or possession of the United States, and shall remain therein for use, sale, or storage, shall, upon arrival in such State, Territory, District, or possession, be subject to the operation of all the laws of such State, Territory, District, or possession of the United States to the same extent and in the same manner as though such articles of merchandise had been produced in such State, Territory, District, or possession, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

(June 13, 1906, ch. 3289, §7, 34 Stat. 262.)

CHAPTER 9—NATIONAL WEATHER SERVICE

Sec.

311. Omitted.

312. Employees.

313. Duties of Secretary of Commerce.

313a. Establishment of meteorological observation stations in the Arctic region.

313b. Institute for Aviation Weather Prediction.

313c. Authorized activities of the National Oceanic and Atmospheric Administration.

313d. NIDIS program.

- 314. Omitted.
- 315. Changes or assignment to duty.
- 316. Omitted.
- 317. Appropriations and estimates.
- 318. Weather signals on mail cars.
- 319 to 321. Omitted or Repealed.
- 322. Odd jobs for part-time employees.
- 323, 324. Repealed or Omitted.
- 325. Authority for certain functions and activities.
- 326. Maintenance of printing office in Washington, D.C.
- 327. Employees for conduct of meteorological investigations in Arctic region; appointment and compensation; extra compensation to other Government employees for taking observations.
- 328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations.
- 329. Omitted.

§311. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Oct. 1, 1890, ch. 1266, §1, 26 Stat. 653, as amended, relating to the establishment of a Weather Bureau in the Department of Commerce, was omitted because the Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department to be known as the Environmental Science Services Administration, and the office of Chief of the Weather Bureau was abolished, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note below. The Reorg. Plan also transferred to the Secretary of Commerce all functions of the Bureau and the Chief of the Bureau.

Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out as a note under section 1511 of this title, abolished the Environmental Science Services Administration, including the offices of Administrator and Deputy Administrator, and established the National Oceanic and Atmospheric Administration within the Department of Commerce. By Department Organization Order 25-5A, republished 39 F.R. 27486, July 29, 1974, the Secretary of Commerce delegated to the National Oceanic and Atmospheric Administration a number of functions vested in him, including his functions under this chapter of the Code. By order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, relating to the Administration, were changed: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey, and Weather Bureau to National Weather Service.

Prior to Oct. 1, 1890, the functions of the Weather Bureau were exercised by the Signal Corps of the Army. Act October 1, 1890, created the present Bureau in the Department of Agriculture. By Reorg. Plan No. IV of 1940, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236, the Bureau and its functions were transferred to the Department of Commerce, "*Provided*, That the Department of Agriculture may continue to make snow surveys and to conduct research concerning: (a) relationships between weather and crops, (b) long-range weather forecasting, and (c) relationships between weather and soil erosion."

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113-86, §1, Mar. 6, 2014, 128 Stat. 1015, provided that: "This Act [amending section 313d of this title and amending provisions set out as a note under section 313d of this title] may be cited as the 'National Integrated Drought Information System Reauthorization Act of 2014'."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-430, §1, Dec. 20, 2006, 120 Stat. 2918, provided that: "This Act [enacting section 313d of this

title and provisions set out as notes under section 313d of this title] may be cited as the 'National Integrated Drought Information System Act of 2006'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-253, §1, Oct. 29, 2002, 116 Stat. 1731, provided that: "This Act [enacting section 313c of this title and provisions set out as notes under section 313c of this title] may be cited as the 'Inland Flood Forecasting and Warning System Act of 2002'."

WEATHER MODIFICATION PROGRAM

Act Aug. 13, 1953, ch. 426, 67 Stat. 559, as amended by act July 9, 1956, ch. 522, 70 Stat. 509, related to research and experimentation in the field of weather modification and created the Advisory Committee on Weather Control. Pub. L. 85-170, ch. II, §201, Aug. 28, 1957, 71 Stat. 427, provided in part that the Advisory Committee on Weather Control shall complete its report and terminate its activities by Dec. 31, 1957.

EXECUTIVE DOCUMENTS

REORGANIZATION PLAN NO. 2 OF 1965

EFF. JULY 13, 1965, 30 F.R. 8819, 79 STAT. 1318, AS AMENDED PUB. L. 90-83, §10(C),
SEPT. 11, 1967, 81 STAT. 224

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 13, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION, DEPARTMENT OF COMMERCE

SECTION 1. TRANSFER OF FUNCTIONS

All functions vested by law in the Weather Bureau, the Chief of the Weather Bureau, the Coast and Geodetic Survey, the Director of the Coast and Geodetic Survey, and any officer, employee, or organizational entity of that Bureau or Survey, and not heretofore transferred to the Secretary of Commerce, hereinafter referred to as the Secretary, are hereby transferred to the Secretary.

SEC. 2. ABOLITIONS

(a) The offices of Director of the Coast and Geodetic Survey, Deputy Director of the Coast and Geodetic Survey, and Chief of the Weather Bureau are hereby abolished. The Secretary shall make such provisions as he shall deem to be necessary respecting the winding up of any outstanding affairs of the officers whose offices are abolished by the provisions of this section.

(b) The abolitions effected by the provision of subsection (a) of this section shall exclude the abolition of rights to which the present incumbents of the abolished offices would be entitled under law upon the termination of their appointments.

SEC. 3. ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(a) The Coast and Geodetic Survey and the Weather Bureau are hereby consolidated to form a new agency in the Department of Commerce which shall be known as the Environmental Science Services Administration, hereinafter referred to as the Administration.

(b) The Secretary shall from time to time establish such constituent organizational entities of the Administration, with such names, as he shall determine.

SEC. 4. OFFICERS OF THE ADMINISTRATION

(a) There shall be at the head of the Administration the Administrator of the Environmental Science Services Administration, hereinafter referred to as the Administrator. The Administrator shall be appointed by the President by and with the advice and consent of the Senate. He shall perform such functions as the Secretary may from time to time direct.

(b)(1) There shall be in the Administration a Deputy Administrator of the Environmental Science Services Administration, hereinafter referred to as the Deputy Administrator, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may from time

to time direct, and, unless he is compensated in pursuance of the provisions of paragraph (2), below, shall receive compensation in accordance with the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5].

(2) The office of Deputy Administrator may be filled at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Deputy Administrator the officer shall have rank, pay and allowances not exceeding those of a Vice Admiral.

(c) The Deputy Administrator or such other official of the Department of Commerce as the Secretary shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) At any one time, one principal constituent organizational entity of the Administration may, if the Secretary so elects, be headed by a commissioned officer of the Administration, who shall be designated by the Secretary. Such designation of an officer shall create a vacancy on the active list and while serving under this paragraph the officer shall have rank, pay and allowances not exceeding those of a Rear Admiral (upper half).

(e) Any commissioned officer of the Administration who has served as Deputy Administrator or has served in a rank above that of Captain as the head of a principal constituent organizational entity of the Administration, and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of Captain shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of Captain and such officer shall be an extra number in that grade. [As amended Pub. L. 90-83 §10(c), Sept. 11, 1967, 81 Stat. 224.]

SEC. 5. AUTHORITY OF THE SECRETARY

Nothing in this reorganization plan shall divest the Secretary of any function vested in him by law or by Reorganization Plan No. 5 of 1950 (64 Stat. 1263) or in any manner derogate from any authority of the Secretary thereunder.

SEC. 6. PERSONNEL, PROPERTY, RECORDS AND FUNDS

(a) The personnel (including commissioned officers) employed in the Coast and Geodetic Survey, the personnel employed in the Weather Bureau, and the property and records held or used by the Weather Bureau or the Coast and Geodetic Survey shall be deemed to be transferred to the Administration.

(b) Unexpended balances of appropriations, allocations, and other funds available or to be made available in connection with functions now administered by the Weather Bureau or by the Coast and Geodetic Survey shall be available to the Administration hereunder in connection with those functions.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provision of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1965, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended, and providing for the reorganization of two major agencies of the Department of Commerce: The Weather Bureau and the Coast and Geodetic Survey.

The reorganization plan consolidates the Coast and Geodetic Survey and the Weather Bureau to form a new

agency in the Department of Commerce to be known as the Environmental Science Services Administration. It is the intention of the Secretary of Commerce to transfer the Central Radio Propagation Laboratory of the National Bureau of Standards to the Administration when the reorganization plan takes effect. The new Administration will then provide a single national focus for our efforts to describe, understand, and predict the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth.

Establishment of the Administration will mark a significant step forward in the continual search by the Federal Government for better ways to meet the needs of the Nation for environmental science services. The organizational improvements made possible by the reorganization plan will enhance our ability to develop an adequate warning system for the severe hazards of nature—for hurricanes, tornadoes, floods, earthquakes, and seismic sea waves, which have proved so disastrous to the Nation in recent years. These improvements will permit us to provide better environmental information to vital segments of the Nation's economy—to agriculture, transportation, communications, and industry, which continually require information about the physical environment. They will mean better services to other Federal departments and agencies—to those that are concerned with the national defense, the exploration of outer space, the management of our mineral and water resources, the protection of the public health against environmental pollution, and the preservation of our wilderness and recreation areas.

The new Administration will bring together a number of allied scientific disciplines that are concerned with the physical environment. This integration will better enable us to look at man's physical environment as a scientific whole and to seek to understand the interactions among air, sea, and earth and between the upper and lower atmosphere. It will facilitate the development of programs dealing with the physical environment and will permit better management of these programs. It will enhance our capability to identify and solve important long-range scientific and technological problems associated with the physical environment. The new Administration will, in consequence, promote a fresh sense of scientific dedication, discovery, and challenge, which are essential if we are to attract scientists and engineers of creativity and talent to Federal employment in this field.

The reorganization plan provides for an Administrator at the head of the Administration, and for a Deputy Administrator, each of whom will be appointed by the President by and with the advice and consent of the Senate. As authorized by the civil service and other laws and regulations, subordinate officers of the Administration will be appointed by the Secretary of Commerce or be assigned by him from among a corps of commissioned officers. The Administration will perform such functions as the Secretary of Commerce may delegate or otherwise assign to it and will be under his direction and control.

Commissioned officers of the Coast and Geodetic Survey will become commissioned officers of the Administration and may serve at the discretion of the Secretary of Commerce throughout the Administration. The reorganization plan authorizes the President at his discretion to fill the Office of Deputy Administrator by appointment, by and with the advice and consent of the Senate, from the active list of commissioned officers of the Administration.

The reorganization plan transmitted herewith abolishes—and thus excludes from the consolidation mentioned above—the offices of (1) Chief of the Weather Bureau, provided for in the act of October 1, 1890 (15 U.S.C. 312); (2) Director of the Coast and Geodetic Survey, provided for in the acts of June 4, 1920, and February 16, 1929, as amended (33 U.S.C. 852, 852a); and (3) Deputy Director of the Coast and Geodetic Survey, provided for in the act of January 19, 1942, as amended (33 U.S.C. 852b).

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 2 of 1965 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that by reason of the reorganizations made by the reorganization plan, it is necessary to include in the plan provisions for the appointment and compensation of the officers of the Administration set forth in section 4 of the reorganization plan. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

In addition to permitting more effective management within the Department of Commerce, the new organization will ultimately produce economies. These economies will be of two types. The first, and probably the most significant, is the savings and avoidance of costs which will result from the sharing of complex and expensive facilities such as satellites, computers, communication systems, aircraft, and ships. These economies will increase in significance as developments in science and technology bring into being still more advanced equipment. Second, integration of the existing headquarters and field organizations will permit more efficient utilization of existing administrative staffs and thereby produce future economies. It is, however, impracticable to specify or itemize at this time the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations included in the reorganization plan.

I recommend that the Congress allow the accompanying reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, May 13, 1965.

§312. Employees

The National Weather Service shall consist of such civilian employees as Congress may annually provide for and as may be necessary to properly perform the duties devolving on said Service by law.

(Oct. 1, 1890, ch. 1266, §4, 26 Stat. 653; July 8, 1898, No. 57, 30 Stat. 752; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Joint Res. July 8, 1898, provided: "That the laws authorizing the detail and assignment of the officers of the Army to duty in the Weather Bureau be, and are hereby, repealed."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. The Reorg. Plan also transferred to Secretary of Commerce functions of Bureau and Chief of Bureau. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25-5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§313. Duties of Secretary of Commerce

The Secretary of Commerce shall have charge of the forecasting of weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of seacoast telegraph lines and the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and rain-fall conditions for the cotton interests, the display of frost and cold-wave signals, the distribution of meteorological information in the interests of agriculture and commerce, and the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States, or as are essential for the proper execution of the foregoing duties.

(Oct. 1, 1890, ch. 1266, §3, 26 Stat. 653; May 20, 1926, ch. 344, §5 (e), 44 Stat. 571; June 23, 1938, ch. 601, title XI, §1107(k), 52 Stat. 1029; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, §§1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

EDITORIAL NOTES

AMENDMENTS

1938—Act June 23, 1938, repealed second paragraph relating to duties as to air navigation.

1926—Act May 20, 1926, inserted second paragraph relating to duties as to air navigation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Pub. L. 85–726, title XIV, §1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, title XI, §1107(k), 52 Stat. 1029, cited to the credit of this section.

CONDUCT OF WEATHER RECONNAISSANCE IN THE UNITED STATES

Pub. L. 118–31, div. A, title X, §1090, Dec. 22, 2023, 137 Stat. 420, provided that:

"(a) CONDUCT OF RECONNAISSANCE.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command and the Administrator of the National Oceanic and Atmospheric Administration may use aircraft, personnel, and equipment necessary to meet the mission requirements of—

"(A) the National Hurricane Operations Plan; and

"(B) the National Winter Seasons Operation plan, as long as aircraft are able to fully meet needs for hurricane monitoring response.

"(2) ACTIVITIES.—If the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command exercises the authority under paragraph (1), such Squadron, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and appropriate line offices of the National Oceanic and Atmospheric Administration, shall use such authority to—

"(A) improve the accuracy and timeliness of observations of storms that result in large amounts of precipitation, such as tropical cyclones and atmospheric rivers, to support the forecast and warning services of the National Weather Service of the United States;

"(B) collect data in data-sparse regions where conventional observations are lacking;

"(C) support water management decision-making and flood forecasting through the execution of targeted in-situ measurements, airborne dropsondes, buoys, autonomous platform observations, satellite observations, remote sensing observations, and other observation platforms as appropriate, including enhanced assimilation of the data from those observations over the eastern, central, and western north Pacific Ocean, the Gulf of Mexico, and the western Atlantic Ocean to improve forecasts of large storms for civil authorities and military decision makers;

"(D) participate in the research and operations partnership that guides flight planning and uses research methods to improve and expand the capabilities and effectiveness of weather reconnaissance over time; and

"(E) undertake such other additional activities as the Administrator of the National Oceanic and Atmospheric Administration, in collaboration with the 53rd Weather Reconnaissance Squadron, considers appropriate to further prediction of dangerous weather events.

"(b) REPORTS.—

"(1) AIR FORCE.—

"(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 22, 2023], the Secretary of the Air Force, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, shall perform a resources review of mission capabilities needed for observation to carry out the activities described in subsection (a)(2) and submit to the appropriate committees of Congress a comprehensive report, for the period beginning on the date of the enactment of this Act and ending on December 31, 2035, on—

"(i) the resources necessary for the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command to continue to support—

"(I) the National Hurricane Operations Plan;

"(II) the National Winter Season Operations Plan;

"(III) emerging technologies that offer new, improved, or innovative ways to collect data for improved forecasts of strength and landfall for hurricanes, atmospheric rivers, and winter storms; and

"(IV) any other operational requirements relating to weather reconnaissance;

"(ii) the resources expended by the National Oceanic and Atmospheric Administration to cover taskings that the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command is unable to accomplish; and

"(iii) the resources expended by the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command to cover taskings that the National Oceanic and Atmospheric Administration is unable to accomplish.

"(B) APPROPRIATE COMMITTEES OF CONGRESS.—In this paragraph, the term 'appropriate committees of Congress' means—

- "(i) the Committee on Armed Services of the Senate;
- "(ii) the Subcommittee on Defense of the Committee on Appropriations of the Senate;
- "(iii) the Committee on Commerce, Science, and Transportation of the Senate;
- "(iv) the Committee on Science, Space, and Technology of the House of Representatives;
- "(v) the Committee on Armed Services of the House of Representatives; and
- "(vi) the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

"(2) COMMERCE.—Not later than 90 days after the date of the enactment of this Act [Dec. 22, 2023], the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a comprehensive report, for the period beginning on the date of the enactment of this Act and ending on December 31, 2035, on—

"(A) the resources necessary for the National Oceanic and Atmospheric Administration to continue to support—

- "(i) the National Hurricane Operations Plan;
- "(ii) the National Winter Season Operations Plan;
- "(iii) emerging technologies that offer new, improved, and innovative ways to collect data for improved forecasts of strength and landfall for hurricanes, atmospheric rivers, and winter storms; and
- "(iv) any other operational requirements relating to weather reconnaissance;

"(B) how taskings that the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command is unable to accomplish could affect the ability of the National Oceanic and Atmospheric Administration to fulfill its mission; and

"(C) how taskings that the National Oceanic and Atmospheric Administration is unable to accomplish could affect the ability of the 53rd Weather Reconnaissance Squadron of the Air Force Reserve Command to fulfill its mission.

"(c) TRANSFER OF FUNDS.—The Secretary of the Air Force may transfer funds to the National Oceanic and Atmospheric Administration for additional hurricane monitoring and response activities that fulfill the mission of the Air Force, including transfers of funds for the compensation of personnel and for the provision of other such services, funds, facilities, and other support services as necessary."

USE OF FUNDS FOR HURRICANE RECONNAISSANCE PROGRAM

Pub. L. 108–199, div. B, title II, §203, Jan. 23, 2004, 118 Stat. 72, provided in part that: "Hereafter, none of the funds made available by this or any other Act for the National Oceanic and Atmospheric Administration may be used to support the hurricane reconnaissance aircraft and activities that are under the control of the United States Air Force or the United States Air Force Reserve."

Similar provisions were contained in the following prior appropriation acts:

- Pub. L. 108–7, div. B, title II, §203, Feb. 20, 2003, 117 Stat. 77.
- Pub. L. 107–77, title II, §203, Nov. 28, 2001, 115 Stat. 778.
- Pub. L. 106–553, §1(a)(2) [title II, §203], Dec. 21, 2000, 114 Stat. 2762, 2762A–78.
- Pub. L. 106–113, div. B, §1000(a)(1) [title II, §203], Nov. 29, 1999, 113 Stat. 1535, 1501A–31.
- Pub. L. 105–277, div. A, §101(b) [title II, §203], Oct. 21, 1998, 112 Stat. 2681–50, 2681–86.
- Pub. L. 105–119, title II, §203, Nov. 26, 1997, 111 Stat. 2479.
- Pub. L. 104–208, div. A, title I, §101(a) [title II, §203], Sept. 30, 1996, 110 Stat. 3009, 3009–39.
- Pub. L. 104–134, title I, §101[(a)] [title II, §203], Apr. 26, 1996, 110 Stat. 1321, 1321–30; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.
- Pub. L. 103–317, title II, §203, Aug. 26, 1994, 108 Stat. 1749.
- Pub. L. 103–121, title II, §203, Oct. 27, 1993, 107 Stat. 1176.
- Pub. L. 102–395, title II, §203, Oct. 6, 1992, 106 Stat. 1855.
- Pub. L. 102–140, title II, §203, Oct. 28, 1991, 105 Stat. 806.
- Pub. L. 101–515, title I, §103, Nov. 5, 1990, 104 Stat. 2107.

HURRICANE RECONNAISSANCE PROGRAM

Pub. L. 102–567, title I, §107, Oct. 29, 1992, 106 Stat. 4275, provided that:

"(a) ESTABLISHMENT OF PROGRAM.—(1) The Secretary of Defense and the Secretary of Commerce shall establish a 5-year joint program for collecting operational and reconnaissance data, conducting research, and analyzing data on tropical cyclones to assist the forecast and warning program and increase the

understanding of the causes and behavior of tropical cyclones.

"(2) The Secretary of Commerce shall establish the Tropical Cyclone Research Advisory Committee, an advisory committee of tropical cyclone research scientists, to make recommendations for tropical cyclone research activities and reconnaissance procedures.

"(b) RESPONSIBILITIES.—(1) The Secretary of Defense shall have the responsibility for maintaining, flying, and funding tropical cyclone reconnaissance aircraft to accomplish the program established under this section and to transfer the data to the Secretary of Commerce. Program responsibility may not be transferred to any other Federal department or agency, including the Coast Guard, without the agreement and approval of the Secretary of Defense, the Secretary of Commerce, and the head of any other Federal agency or department to which the responsibility is transferred.

"(2) The Secretary of Commerce shall have the responsibility to provide funding for data gathering and research by remote sensing, ground sensing, research aircraft, and other technologies necessary to accomplish the program established under this section.

"(c) MANAGEMENT PLANS.—(1) The Secretary of Defense and the Secretary of Commerce shall jointly develop and, within 120 days after the date of enactment of this Act [Oct. 29, 1992], submit to the Congress a management plan for the program established under this section, which shall include organizational structure, goals, major tasks, and funding profiles for the 5-year duration of the program.

"(2) The Secretary of Defense and the Secretary of Commerce, in consultation with the Tropical Cyclone Research Advisory Committee established by section 107(a)(2), shall jointly develop and, within 4 years after the date of enactment of this Act, submit to the Congress a management plan providing for continued tropical cyclone surveillance and reconnaissance which will adequately protect the citizens of the coastal areas of the United States.

"(3) The management plans and programs required by this section shall in every sense provide for at least the same degree and quality of protection (such as early warning capability and accuracy of fixing a storm's location) as currently exists with a combination of satellite technology and manned reconnaissance flights. Additionally, such plans and programs shall in no way allow any reduction in the level, quality, timeliness, sustainability, or area served (including the State of Hawaii) of both the existing principal and back-up tropical cyclone reconnaissance and tracking systems."

UNITED STATES WEATHER RESEARCH PROGRAM

Pub. L. 102–567, title I, §108, Oct. 29, 1992, 106 Stat. 4276, as amended by Pub. L. 115–25, title I, §109, Apr. 18, 2017, 131 Stat. 97, formerly set out as a note under this section, was transferred to section 8520 of this title.

WEATHER SERVICE MODERNIZATION

Pub. L. 102–567, title VII, Oct. 29, 1992, 106 Stat. 4303, provided that:

"SEC. 701. SHORT TITLE.

"This title may be cited as the 'Weather Service Modernization Act'.

"SEC. 702. DEFINITIONS.

"For the purposes of this title, the term—

"(1) 'automate' means to replace employees with automated weather service equipment;

"(2) 'change operations at a field office' means transfer service responsibility, commission weather observation systems, decommission a National Weather Service radar, change staffing levels significantly, or move a field office to a new location inside the local commuting and service area;

"(3) 'Committee' means the Modernization Transition Committee established by section 707;

"(4) 'degradation of service' means any decrease in or failure to maintain the quality and type of weather services provided by the National Weather Service to the public in a service area, including but not limited to a reduction in existing weather radar coverage at an elevation of 10,000 feet;

"(5) 'field office' means any National Weather Service Office or National Weather Service Forecast Office;

"(6) 'Plan' means the National Implementation Plan required under section 703;

"(7) 'relocate' means to transfer from one location to another location that is outside the local commuting or service area;

"(8) 'Secretary' means the Secretary of Commerce;

"(9) 'service area' means the geographical area for which a field office provides services or conducts observations, including but not limited to local forecasts, severe weather warnings, aviation support, radar coverage, and ground weather observations; and

"(10) 'Strategic Plan' means the 10-year strategic plan for the comprehensive modernization of the National Weather Service, required under section 407 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (15 U.S.C. 313 note).

"SEC. 703. NATIONAL IMPLEMENTATION PLAN.

"(a) NATIONAL IMPLEMENTATION PLAN.—As part of the budget justification documents submitted to Congress in support of the annual budget request for the Department of Commerce, the Secretary shall include a National Implementation Plan for modernization of the National Weather Service for each fiscal year following fiscal year 1993 until such modernization is complete. The Plan shall set forth the actions, during the 2-year period beginning with the fiscal year for which the budget request is made, that will be necessary to accomplish the objectives described in the Strategic Plan, and shall include—

"(1) detailed requirements for new technologies, facilities, staffing levels and positions, and funding, in accordance with the overall schedule for modernization;

"(2) notification of any proposed action to change operations at a field office and the intended date of such operational change;

"(3) identification of any field office that the Secretary intends to certify under section 706, including the intended date of such certification;

"(4) special measures to test, evaluate, and demonstrate key elements of the modernized National Weather Service operations prior to national implementation, including a multistation operational demonstration which tests the performance of the modernization in an integrated manner for a sustained period;

"(5) detailed plans and funding requirements for meteorological research to be accomplishment [sic] under this title to assure that new techniques in forecasting will be developed to utilize the new technologies being implemented in the modernization; and

"(6) training and education programs to ensure that employees gain the necessary expertise to utilize the new technologies and to minimize employee displacement as a consequence of modernization.

"(b) TRANSMITTAL TO COMMITTEE.—The Secretary shall transmit a copy of each annual Plan to the Committee.

"(c) CONSULTATION.—In developing the Plan, the Secretary shall consult, as appropriate, with the Committee and public entities responsible for providing or utilizing weather services.

"SEC. 704. MODERNIZATION CRITERIA.

"(a) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall contract with the National Research Council for a review of the scientific and technical modernization criteria by which the Secretary proposes to certify action to close, consolidate, automate, or relocate a field office under section 706. In conducting such review, the National Research Council shall prepare and submit to the Secretary, no later than 9 months after the date of enactment of this Act [Oct. 29, 1992], a report which—

"(1) assesses requirements and procedures for commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area;

"(2) assesses the statistical and analytical measures that should be made for a service area to form an adequate basis for determining that there will be no degradation of service; and

"(3) includes such other recommendations as the National Research Council determines are appropriate to ensure public safety.

"(b) CRITERIA.—No later than 12 months after the date of enactment of this Act [Oct. 29, 1992], the Secretary, in consultation with the National Research Council and the Committee and after notice and opportunity for public comment, shall publish in the Federal Register modernization criteria (including all requirements and procedures), based on the report required under this section, for—

"(1) commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area; and

"(2) certifying action to close, consolidate, automate, or relocate a field office under section 706.

"SEC. 705. CHANGES IN FIELD OFFICE OPERATIONS.

"(a) NOTIFICATION.—The Secretary shall not change operations at a field office pursuant to implementation of the Strategic Plan unless the Secretary has provided the notification required by section 703.

"(b) WEATHER RADAR DECOMMISSIONING.—The Secretary shall not remove or permanently decommission any National Weather Service radar until the Secretary has prepared radar commissioning and decommissioning reports documenting that such action would be consistent with the modernization criteria

established under section 704(b)(1). The commissioning report shall document that the radar system performs reliably, satisfactory maintenance support is in place, sufficient staff with adequate training are present to operate the system, technical coordination with weather service users has been completed, and the radar being commissioned satisfactorily supports field office operations. The decommissioning report shall document that the replacement radar has been commissioned, technical coordination with service users has been completed, and the radar being decommissioned is no longer needed to support field office operations.

"(c) SURFACE OBSERVING SYSTEM COMMISSIONING.—The Secretary may not commission an automated surface observing system located at an airport unless it is determined, in consultation with the Secretary of Transportation, that the weather services provided after commissioning will continue to be in full compliance with applicable flight aviation rules promulgated by the Federal Aviation Administration.

"SEC. 706. RESTRUCTURING FIELD OFFICES.

"SEC. 706. (a) PROHIBITION.—The Secretary shall not close, before January 1, 1996, any field office pursuant to implementation of the Strategic Plan.

"(b) CERTIFICATION.—The Secretary shall not close, consolidate, automate, or relocate any field office, unless the Secretary has certified that such action will not result in any degradation of service. Such certification shall include—

"(1) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

"(2) a detailed comparison of the services provided within the service area and the services to be provided after such action;

"(3) a description of any recent or expected modernization of National Weather Service operations which will enhance services in the service area;

"(4) an identification of any area within any State which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

"(5) evidence, based upon operational demonstration of modernized National Weather Service operations, which was considered in reaching the conclusion that no degradation in service will result from such action; and

"(6) any report of the Committee submitted under section 707(c) that evaluates the proposed certification.

"(c) PUBLIC REVIEW.—Each certification decision shall be preceded by—

"(1) publication in the Federal Register of a proposed certification; and

"(2) a 60-day period after such publication during which the public may provide comments to the Secretary on the proposed certification.

"(d) FINAL DECISION.—If after consideration of the public comment received under subsection (c) the Secretary, in consultation with the Committee, decides to close, consolidate, automate, or relocate any such field office, the Secretary shall publish a final certification in the Federal Register and submit the certification to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

"(e) SPECIAL CIRCUMSTANCES.—The Secretary may not close or relocate any field office—

"(1) which is located at an airport, unless the Secretary, in consultation with the Secretary of Transportation and the Committee, first conducts an air safety appraisal, determines that such action will not result in degradation of service that affects aircraft safety, and includes such determination in the certification required under subsection (b); or

"(2) which is the only office in a State, unless the Secretary first evaluates the effect on weather services provided to in-State users, such as State agencies, civil defense officials, and local public safety offices, and includes in the certification required under subsection (b) the Secretary's determination that a comparable level of weather services provided to such in-State users will remain.

"(f) LIAISON OFFICER.—The Secretary may not close, consolidate, automate, or relocate a field office until arrangements have been made to maintain for a period of at least 2 years at least one person in the service area to act as a liaison officer who—

"(1) provides timely information regarding the activities of the National Weather Service which may affect service to the community, including modernization and restructuring; and

"(2) works with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

"SEC. 707. MODERNIZATION TRANSITION COMMITTEE.

"(a) ESTABLISHMENT.—There is established a committee of 12 members to be known as the

Modernization Transition Committee.

"(b) MEMBERSHIP AND TERMS.—(1) The Committee shall consist of—

"(A) five members representing agencies and departments of the United States which are responsible for providing or using weather services, including but not limited to the National Weather Service, the Department of Defense, the Federal Aviation Administration, and the Federal Emergency Management Agency; and

"(B) seven members to be appointed by the Secretary from civil defense and public safety organizations, news media, any labor organization certified by the Federal Labor Relations Authority as an exclusive representative of weather service employees, meteorological experts, and private sector users of weather information such as pilots and farmers.

"(2) The terms of office of a member of the Committee shall be 3 years; except that, of the original membership, four shall serve a 5-year term, four shall serve a 4-year term, and four shall serve a 3-year term. No individual may serve for more than one additional 3-year term.

"(3) The Secretary shall designate a chairman of the Committee from among its members.

"(c) DUTIES.—(1) The Committee may review any proposed certification under section 706 for which the Secretary has provided a notice of intent to certify in the Plan, and should review such a proposed certification if there is a significant possibility of degradation of service within the affected service area. Upon the request of the Committee, the Secretary shall make available to the Committee the supporting documents developed by the Secretary in connection with the proposed certification. The Committee may prepare and submit to the Secretary, prior to publication of the proposed certification, a report which evaluates the proposed certification on the basis of the modernization criteria and with respect to the requirement that there be no degradation of service.

"(2) The Committee shall advise the Congress and the Secretary on—

"(A) the implementation of the Strategic Plan, annual development of the Plan, and establishment and implementation of modernization criteria; and

"(B) matters of public safety and the provision of weather services which relate to the comprehensive modernization of the National Weather Service.

"(d) PAY AND TRAVEL EXPENSES.—Members of the Committee who are not employees of the United States shall each be paid at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Committee. Members shall receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

"(e) STAFF.—The Secretary shall make available to the Committee such staff, information, and assistance as it may reasonably require to carry out its activities.

"(f) TERMINATION.—The Committee shall terminate on December 31, 1999.

"SEC. 708. WEATHER SERVICE REPORT.

"(a) REPORT.—The Secretary shall prepare a report on the proposed modernization of the National Weather Service and transmit the report, not later than 6 months after the date of enactment of this Act [Oct. 29, 1992], to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

"(b) CONTENTS.—(1) The report required by subsection (a) shall identify the size of the geographic area of responsibility of each proposed Weather Forecast Office and shall include an explanation of the number and type of personnel required at each Weather Forecast Office. For each proposed Weather Forecast Office covering a geographic area greater than two times the average geographic area of responsibility of Weather Forecast Offices nationwide, the report shall detail the reasons for assigning those Weather Forecast Offices a geographic area which differs significantly from the national average.

"(2) The report shall list the number of next generation weather radars that will be associated with each Weather Forecast Office nationwide under the proposed modernization plan. If some Weather Forecast Offices will be associated with more than one such radar, the report shall explain the deviation from the National Weather Service's stated policy of associating one such radar with one Weather Forecast Office, and shall analyze and compare any differences in the expected efficiency of those Weather Forecast Offices with Weather Forecast Offices that will be associated with only one such radar.

"(c) CONSULTATION.—In preparing portions of the report that address Weather Forecast Offices located in areas of the Nation that are uniquely dependent on general aviation as a means of transportation, the Secretary shall consult with local aviation groups. In the case of Alaska, such local groups shall include the Alaska Aviation Safety Foundation, the Alaska Airmen's Association, and the regional representatives of the Aircraft Owners and Pilots Association.

"SEC. 709. REPEALS.

"[Amended section 407 of Pub. L. 100–685, set out below, and repealed section 408 of Pub. L. 100–685, formerly set out below.]"

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

PURCHASE OF ATMOSPHERIC WIND DATA

Pub. L. 101–595, title III, §320, Nov. 16, 1990, 104 Stat. 2989, provided that: "The National Oceanic and Atmospheric Administration is authorized to enter into a contract for the future purchase of atmospheric wind data. Any and all obligations of the Government under such contract shall be contingent upon the following terms:

"(1) the data to be purchased must meet technical criteria specified in the contract and must be satisfactory to the National Oceanic and Atmospheric Administration; and

"(2) the availability of appropriated funds."

NATIONAL WEATHER SERVICE 10-YEAR STRATEGIC PLAN

Pub. L. 100–685, title IV, §407, Nov. 17, 1988, 102 Stat. 4098, as amended by Pub. L. 102–567, title VII, §709(1), Oct. 29, 1992, 106 Stat. 4309, directed Secretary of Commerce to prepare and submit to Congress, not later than 90 days after Nov. 17, 1988, a 10-year strategic plan for comprehensive modernization of National Weather Service, setting forth basic service improvement objectives of modernization as well as critical new technological components and associated operational changes necessary to fulfill objectives of weather and flood warning service improvements.

DEGRADATION-OF-WEATHER-SERVICES STANDARD FOR PROVIDING SERVICES

Pub. L. 100–685, title IV, §408, Nov. 17, 1988, 102 Stat. 4099, prohibited Secretary of Commerce from closing, consolidating, automating, or relocating, any Weather Service Office or Weather Service Forecast Office pursuant to the implementation of the strategic plan required by section 407 of Pub. L. 100–685 [formerly set out above] unless the Secretary certified to Committee on Commerce, Science, and Transportation of the Senate and Committee on Science, Space, and Technology of the House of Representatives that such action would not result in any degradation of weather services provided to the affected area, prior to repeal by Pub. L. 102–567, title VII, §709(2), Oct. 29, 1992, 106 Stat. 4309.

WEATHER AND CLIMATE INFORMATION IN AGRICULTURE

Pub. L. 99–198, title XVII, §1762, Dec. 23, 1985, 99 Stat. 1651, as amended by Pub. L. 115–25, title II, §201, Apr. 18, 2017, 131 Stat. 98, formerly set out as a note under this section, was transferred to section 8521 of this title.

NATIONAL WEATHER SERVICE; CONGRESSIONAL APPROVAL REQUISITE TO SALE, LEASE, TRANSFER, OR DISMANTLING OF AGENCY

Pub. L. 98–8, title I, §104, Mar. 24, 1983, 97 Stat. 34, provided that:

"Since the Administration has proposed to sell the weather (METSAT) and land (LANDSAT) satellite systems;

"Since there are concerns about possible commercialization of the National Weather Service;

"Since our country should provide weather service information for the protection of life and property;

"Since our Nation's economy—its agriculture, aviation, ocean shipping and construction—is heavily affected by weather and our ability to forecast and disseminate vital information about its behavior: Now, therefore,

"It is the sense of the Congress that a reliable and comprehensive national weather information system responsive to the needs of national security; agriculture, transportation and other affected sectors; and individual citizens must be maintained through a strong central National Weather Service that can work closely with the private sector, other Federal and State government agencies, and the weather services of other nations.

"Further, the Nation's civil operational remote sensing satellites (METSAT and LANDSAT) shall remain under the National Oceanic and Atmospheric Administration. No effort shall be made to dismantle, transfer, lease or sell any portion of these systems without prior congressional approval."

STUDY OF THUNDERSTORMS AND ATMOSPHERIC DISTURBANCES; REPORTS;

EXPENDITURES; COOPERATION OF OTHER DEPARTMENTS

Act June 16, 1948, ch. 483, 62 Stat. 470, as amended Oct. 19, 1980, Pub. L. 96-470, title I, §103(b), 94 Stat. 2237, provided: "That the Chief of the Weather Bureau is authorized and directed to study fully and thoroughly the internal structure of thunderstorms, hurricanes, cyclones, and other severe atmospheric disturbances, particularly the degree of turbulence within such storms and the development, maintenance, and magnitude of updrafts and downdrafts with a view to establishing methods by which the characteristics of particular thunderstorms may be forecast and methods by which the characteristics of such storms may be determined on visual observation from outside of the immediate thunderstorm area. Such study shall be concluded at the earliest practicable date and a final report submitted to Congress.

"SEC. 2. The Chief of the Weather Bureau is empowered to make such expenditures at the seat of government and elsewhere as may be necessary to carry out the purposes of this Act and as from time to time may be appropriated for by Congress, including expenditures for the development and purchase of special meteorological instruments and other equipment (including motor vehicles and aircraft), without regard to the provisions of section 3709 of the Revised Statutes [now 41 U.S.C. 6101]. There is hereby authorized to be appropriated such sums as are necessary for the purpose of carrying out the provisions of this Act.

"SEC. 3. Any executive department or independent establishment is hereby authorized to cooperate with the Chief of the Weather Bureau in carrying out the purposes of this Act, and for such purposes may lend or transfer to the Chief of the Weather Bureau any officer or employee of such department or establishment and any property, equipment, lands, or buildings under its control."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and functions transferred to Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Reorg. Plan No. IV of 1940 transferred Weather Bureau from Department of Agriculture to Department of Commerce. For further details, see notes set out under section 311 of this title.

§313a. Establishment of meteorological observation stations in the Arctic region

In order to improve the weather forecasting service of the United States and to promote safety and efficiency in civil air navigation to the highest possible degree, the Secretary of Commerce shall, in addition to his other functions and duties, take such action as may be necessary in the development of an international basic meteorological reporting network in the Arctic region of the Western Hemisphere, including the establishment, operation, and maintenance of such reporting stations in cooperation with the State Department and other United States governmental departments and agencies, with the meteorological services of foreign countries and with persons engaged in air commerce.

(Feb. 12, 1946, ch. 4, §1, 60 Stat. 4; 1965 Reorg. Plan No. 2, §§1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPROPRIATIONS

Section 2 of act Feb. 12, 1946, authorized appropriation of necessary funds to carry out provisions of this section.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and functions transferred to Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. For further details, see notes set out under section 311 of this title.

§313b. Institute for Aviation Weather Prediction

The Administrator of the National Oceanic and Atmospheric Administration shall establish an Institute for Aviation Weather Prediction. The Institute shall provide forecasts, weather warnings, and other weather services to the United States aviation community. The Institute shall expand upon the activities of the aviation unit currently at the National Severe Storms Forecast Center in Kansas City, Missouri, and shall be established in the Kansas City ¹ Missouri ¹ area. The Administrator of the National Oceanic and Atmospheric Administration shall provide a full and fair opportunity for employees at the National Severe Storms Center to assume comparable duties and responsibilities within the Institute.

(Pub. L. 102–588, title II, §222, Nov. 4, 1992, 106 Stat. 5119.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–567, title I, §112, Oct. 29, 1992, 106 Stat. 4278.

¹ So in original. Probably should be followed by a comma.

§313c. Authorized activities of the National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration, through the United States Weather Research Program, shall—

- (1) improve the capability to accurately forecast inland flooding (including inland flooding influenced by coastal and ocean storms) through research and modeling;
- (2) develop, test, and deploy a new flood warning index that will give the public and emergency management officials fuller, clearer, and more accurate information about the risks and dangers posed by expected floods;
- (3) train emergency management officials, National Weather Service personnel, meteorologists, and others as appropriate regarding improved forecasting techniques for inland flooding, risk management techniques, and use of the inland flood warning index developed under paragraph (2);
- (4) conduct outreach and education activities for local meteorologists and the public regarding the dangers and risks associated with inland flooding and the use and understanding of the inland flood warning index developed under paragraph (2); and
- (5) assess, through research and analysis of previous trends, among other activities—
 - (A) the long-term trends in frequency and severity of inland flooding; and
 - (B) how shifts in climate, development, and erosion patterns might make certain regions vulnerable to more continual or escalating flood damage in the future.

(Pub. L. 107–253, §2, Oct. 29, 2002, 116 Stat. 1731.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 107–253, §3, Oct. 29, 2002, 116 Stat. 1731, provided that: "There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for carrying out this Act [see Short Title of 2002 Amendment note set out under section 311 of this title] \$1,250,000 for each of the fiscal years 2003 through 2005, of which \$100,000 for each fiscal year shall be available for competitive merit-reviewed grants to institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) to carry out the activities described in section 2(5) [15 U.S.C. 313c(5)], and \$1,150,000 for each of the fiscal years 2006 and 2007. Of the amounts authorized under this section, \$250,000 for each fiscal year shall

be available for competitive merit-reviewed grants to institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) to develop models that can improve the ability to forecast the coastal and estuary-inland flooding that is influenced by tropical cyclones. The models should incorporate the interaction of such factors as storm surges, soil saturation, and other relevant phenomena."

REPORT

Pub. L. 107-253, §4, Oct. 29, 2002, 116 Stat. 1732, required the National Oceanic and Atmospheric Administration to provide Congress with annual reports through fiscal year 2007 on its activities under Pub. L. 107-253 (see Short Title note set out under section 311 of this title) and the success and acceptance of the inland flood warning index developed under par. (2) of this section and also to report by Jan. 1, 2006, on the likely long-term trends in inland flooding for use in outreach activities conducted under par. (4) of this section.

§313d. NIDIS program

(a) In general

The Under Secretary, through the National Weather Service and other appropriate weather and climate programs in the National Oceanic and Atmospheric Administration, shall establish a National Integrated Drought Information System to better inform and provide for more timely decisionmaking to reduce drought related impacts and costs.

(b) System functions

The National Integrated Drought Information System shall—

(1) provide an effective drought early warning system that—

(A) collects and integrates information on the key indicators of drought and drought impacts, including precipitation, soil moisture, and evaporative demand, in order to make usable, reliable, and timely forecasts of drought and assessments of the severity of drought conditions and impacts; and

(B) provides such information, forecasts, and assessments on both national and regional levels;

(2) communicate drought forecasts, drought conditions, and drought impacts on an ongoing basis to public and private entities engaged in drought planning and preparedness, including—

(A) decisionmakers at the Federal, regional, State, tribal, and local levels of government;

(B) the private sector; and

(C) the public;

(3) provide timely data, information, and products that reflect local, regional, watershed, and State differences in drought conditions;

(4) coordinate, and integrate, through interagency agreements as practicable, Federal research and monitoring in support of a drought early warning information system;

(5) utilize existing forecasting and assessment programs and partnerships, including forecast communication coordinators and cooperative institutes, and improvements in seasonal precipitation and temperature, subseasonal precipitation and temperature, and low flow water prediction; and

(6) continue ongoing research and monitoring activities related to drought, including research activities relating to the prediction, length, severity, and impacts of drought and the role of extreme weather events and climate variability in drought.

(c) Partnerships

The National Integrated Drought Information System may—

(1) engage with the private sector to improve drought monitoring, forecast, and communication if the Under Secretary determines the partnership is appropriate, cost-effective, and beneficial to the public and decisionmakers described in subsection (b)(2)(A);

(2) facilitate the development of 1 or more academic cooperative partnerships to assist with National Integrated Drought Information System functions; and

(3) utilize and support, as appropriate, monitoring by citizen scientists, including by developing best practices to facilitate maximum data integration.

(d) Consultation

The Under Secretary shall consult with relevant Federal, regional, State, tribal, and local government agencies, research institutions, and the private sector in the development and sustainment of the National Integrated Drought Information System.

(e) Cooperation from other Federal agencies

Each Federal agency shall cooperate as appropriate with the Under Secretary in carrying out this section.

(f) Soil moisture

Not later than 1 year after January 7, 2019, the Under Secretary, acting through the National Integrated Drought Information System, shall develop a strategy for a national coordinated soil moisture monitoring network.

(Pub. L. 109–430, §3, Dec. 20, 2006, 120 Stat. 2918; Pub. L. 113–86, §2, Mar. 6, 2014, 128 Stat. 1015; Pub. L. 115–423, §2(a), Jan. 7, 2019, 132 Stat. 5454.)

EDITORIAL NOTES

REFERENCES IN TEXT

This section, referred to in subsec. (e), was in the original "this Act", meaning Pub. L. 109–430, Dec. 20, 2006, 120 Stat. 2918, which enacted this section and provisions set out as notes under this section and section 311 of this title. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 311 of this title and Tables.

AMENDMENTS

2019—Subsec. (b)(1)(A). Pub. L. 115–423, §2(a)(1)(A), substituted ", including precipitation, soil moisture, and evaporative demand, in order to make usable, reliable, and timely forecasts of drought and" for "in order to make usable, reliable, and timely forecasts of drought, including".

Subsec. (b)(3). Pub. L. 115–423, §2(a)(1)(B), inserted "watershed," after "regional,".

Subsec. (b)(4). Pub. L. 115–423, §2(a)(1)(C), inserted ", through interagency agreements" after "integrate" and "information" after "warning".

Subsec. (b)(5). Pub. L. 115–423, §2(a)(1)(D), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "build upon existing forecasting and assessment programs and partnerships, including through the designation of one or more cooperative institutes to assist with National Integrated Drought Information System functions; and".

Subsec. (b)(6). Pub. L. 115–423, §2(a)(1)(E), inserted "the prediction," after "relating to".

Subsec. (c). Pub. L. 115–423, §2(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 115–423, §2(a)(2), (4), redesignated subsec. (c) as (d) and inserted "and sustainment" after "development". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 115–423, §2(a)(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 115–423, §2(a)(5), added subsec. (f) and struck out former subsec. (f), which related to report by Under Secretary to congressional committees regarding National Integrated Drought Information System program not later than 18 months after Mar. 6, 2014.

Pub. L. 115–423, §2(a)(2), redesignated subsec. (e) as (f).

2014—Subsec. (a). Pub. L. 113–86, §2(1), inserted "to better inform and provide for more timely decisionmaking to reduce drought related impacts and costs" before period at end.

Subsec. (b). Pub. L. 113–86, §2(2), added subsec. (b) and struck out former subsec. (b) which set out required functions of the National Integrated Drought Information System.

Subsec. (e). Pub. L. 113–86, §2(3), added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 109–430, §4, Dec. 20, 2006, 120 Stat. 2919, as amended by Pub. L. 113–86, §3, Mar. 6, 2014, 128 Stat. 1016; Pub. L. 115–423, §2(b), Jan. 7, 2019, 132 Stat. 5455, provided that: "There are authorized to be appropriated to carry out this Act—

- "(1) \$13,500,000 for fiscal year 2019;
- "(2) \$13,750,000 for fiscal year 2020;
- "(3) \$14,000,000 for fiscal year 2021;
- "(4) \$14,250,000 for fiscal year 2022; and
- "(5) \$14,500,000 for fiscal year 2023."

DEFINITIONS

Pub. L. 109–430, §2, Dec. 20, 2006, 120 Stat. 2918, provided that: "In this Act [see Short Title of 2006 Amendment note set out under section 311 of this title]:

"(1) DROUGHT.—The term 'drought' means a deficiency in precipitation—

"(A) that leads to a deficiency in surface or subsurface water supplies (including rivers, streams, wetlands, ground water, soil moisture, reservoir supplies, lake levels, and snow pack); and

"(B) that causes or may cause—

"(i) substantial economic or social impacts; or

"(ii) substantial physical damage or injury to individuals, property, or the environment.

"(2) UNDER SECRETARY.—The term 'Under Secretary' means the Under Secretary of Commerce for Oceans and Atmosphere."

§314. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Aug. 8, 1894, ch. 238, 28 Stat. 273, related to making promotions in service without prejudice to those transferred from Signal Service of War Department.

§315. Changes or assignment to duty

The Secretary of Commerce is authorized to make such changes or assignment to duty in the personnel or detailed force of the National Weather Service for limiting or reducing expenses as he may deem necessary.

(Mar. 2, 1895, ch. 169, 28 Stat. 737; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§316. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Mar. 4, 1913, ch. 145, §1 [part], 37 Stat. 830, related to travel expenses, and has been superseded by section 5701 et seq. of Title 5, Government Organization and Employees.

§317. Appropriations and estimates

The appropriations for the support of the National Weather Service shall be made with those of the other bureaus of the Department of Commerce, and it shall be the duty of the Secretary of Commerce to prepare future estimates for the National Weather Service which shall be specially developed and extended in the interests of agriculture.

(Oct. 1, 1890, ch. 1266, §9, 26 Stat. 653; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 9 (less 1st 35 words) of act Oct. 1890. Remainder of such section 9 was classified to section 215 of former title 10, and was repealed by act Aug. 10, 1956, ch. 1041, 68A Stat. 648.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2, of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25-5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

Reorg. Plan No. IV of 1940 transferred Weather Bureau from Department of Agriculture to Department of Commerce.

§318. Weather signals on mail cars

The Secretary of Commerce, in cooperation with the United States Postal Service, may arrange a plan by which there shall be displayed on all cars and other conveyances used for transporting United States mail suitable flags or other signals to indicate weather forecasts, cold-wave warnings, frost warnings, and so forth, to be furnished by the Secretary.

(Apr. 25, 1896, ch. 140, 29 Stat. 108; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, §§1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Pub. L. 91-375, §4(a), Aug. 12, 1970, 84 Stat. 773.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"United States Postal Service" substituted in text for "Postmaster General" pursuant to Pub. L. 91-375, §4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service, which abolished the office of Postmaster General of the Post Office Department and transferred its functions to the United States Postal Service.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and functions transferred to Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Reorg. Plan No. IV of 1940 transferred Weather Bureau from Department of Agriculture to Department of Commerce. For further details, see notes set out under section 311 of this title.

§319. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act June 3, 1948, ch. 400, title III, 62 Stat. 328, was from the Department of Commerce Appropriation Act, 1949, and was not repeated in subsequent appropriations acts. Similar provisions were contained in prior appropriations acts back to 1925. Section related to printing by Weather Bureau. See section 326 of this title.

§320. Repealed. Oct. 31, 1951, ch. 654, §1(34), 65 Stat. 702

Section, act Mar. 4, 1907, ch. 2907, 34 Stat. 1258, related to sale of maps or publications.

§321. Repealed. Oct. 25, 1951, ch. 562, §1(15), 65 Stat. 638

Section, act May 25, 1900, ch. 555, 31 Stat. 204, relating to destruction of old telegrams. See section 3301 et seq. of Title 44, Public Printing and Documents.

§322. Odd jobs for part-time employees

National Weather Service part-time employees, appointed by designation or otherwise under regulations of the Director of the Office of Personnel Management for observational work, may perform odd jobs in the installation, repair, improvement, alteration, cleaning, or removal of Government property and receive compensation therefor under regulations to be prescribed by the Secretary of Commerce.

(July 1, 1943, ch. 182, title III, 57 Stat. 300; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SIMILAR PROVISIONS

Section is from the Departments of State, Justice, and Commerce Appropriation Act, 1944. Similar provisions were contained in the following appropriation acts:

July 2, 1942, ch. 472, title III, 56 Stat. 500.

June 28, 1941, ch. 258, title II, 55 Stat. 289.

June 25, 1940, ch. 421, 54 Stat. 539.

June 30, 1939, ch. 253, title I, 53 Stat. 947.

June 16, 1938, ch. 464, title I, 52 Stat. 718.

June 29, 1937, ch. 404, 50 Stat. 403.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted in text for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25-5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§323. Repealed. July 25, 1947, ch. 327, §1, 61 Stat. 449

Section, act Oct. 29, 1942, ch. 632, 56 Stat. 1012, related to scholarships for meteorological students in weather forecasting during World War II.

§324. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act June 3, 1948, ch. 400, title III, 62 Stat. 328, which related to extra compensation for certain employees in Alaska and other territorial possessions, was from the Department of Commerce Appropriation Act, 1949, and was not repeated in subsequent appropriations acts. See section 327 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SIMILAR PROVISIONS

Similar provisions were contained in the following appropriation acts:

July 9, 1947, ch. 211, title III, 61 Stat. 301.

July 5, 1946, ch. 541, title III, 60 Stat. 475.

May 21, 1945, ch. 129, title III, 59 Stat. 195.

June 28, 1944, ch. 294, title III, 58 Stat. 424.

July 1, 1943, ch. 182, title III, 57 Stat. 301.

§325. Authority for certain functions and activities

Appropriations now or hereafter provided for the National Weather Service shall be available for (a) furnishing food and shelter, without repayment therefor, to employees of the Government assigned to Arctic stations; (b) equipment and maintenance of meteorological offices and stations, and maintenance and operation of meteorological facilities outside the United States by contract or otherwise; (c) repairing, altering, and improving of buildings occupied by the National Weather

Service, and care and preservation of grounds, including the construction of necessary outbuildings and sidewalks on public streets abutting National Weather Service grounds; (d) arranging for communication services at rates to be fixed by the Secretary of Commerce by agreement with the companies performing the services when determined to be advantageous to the Government; and (e) purchasing tabulating cards and continuous form tabulating paper.

(June 2, 1948, ch. 373, §1, 62 Stat. 286; 1965 Reorg. Plan No. 2, 1970 eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

COOPERATIVE WEATHER OBSERVER PROGRAM

Pub. L. 102-567, title I, §101(c), Oct. 29, 1992, 106 Stat. 4270, provided that: "The Secretary of Commerce may use funds otherwise available for conducting weather observations to strengthen the Cooperative Weather Observer Program and encourage public participation in the program. The Secretary may—

"(1) provide distinctive insignia or paraphernalia to Cooperative Weather Observers; and

"(2) make awards of nominal value to recognize continued participation in the program by observers or to recognize outstanding achievements by such observers or groups of observers without regard to any law restricting expenditures for such purposes to Federal employees."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25-5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§326. Maintenance of printing office in Washington, D.C.

When so specified in appropriation Acts, the National Weather Service is authorized to maintain a printing office in the city of Washington for the printing of weather maps, bulletins, circulars, forms, and other publications: *Provided*, That no printing shall be done by the National Weather Service which could be done at the Government Publishing Office without impairing the service of said Service.

(June 2, 1948, ch. 373, §2, 62 Stat. 286; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Government Publishing Office" substituted for "Government Printing Office" in text on authority of section 1301(b) of Pub. L. 113-235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25-5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§327. Employees for conduct of meteorological investigations in Arctic region; appointment and compensation; extra compensation to other Government employees for taking observations

The Secretary of Commerce is authorized to (a) appoint employees for the conduct of meteorological investigations in the Arctic region without regard to the civil service laws and fix their compensation without regard to chapter 51 and subchapter III of chapter 53 of title 5, and sections 5542, 5543, 5545, and 5546 of title 5, at base rates not to exceed the maximum scheduled rate for GS-12, and (b) grant extra compensation to employees of other Government agencies for taking and transmitting meteorological observations without regard to section 5533 of title 5.

(June 2, 1948, ch. 373, §3, 62 Stat. 286; Pub. L. 86-397, §2, Mar. 28, 1960, 74 Stat. 11; Pub. L. 88-448, title IV, §401(m), Aug. 19, 1964, 78 Stat. 491.)

EDITORIAL NOTES

CODIFICATION

In this section, "chapter 51 and subchapter III of chapter 53 of title 5", "sections 5542, 5543, 5545, and 5546 of title 5", and "section 5533 of title 5" substituted for "the Classification Act of 1949, as amended (5 U.S.C. 1071 and the following)", "titles II and III of the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 911 and the following)", and "section 301 of the Dual Compensation Act", respectively, on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1964—Pub. L. 88-448 inserted "without regard to section 5533 of title 5".

1960—Pub. L. 86-397 substituted "Secretary of Commerce" for "Weather Bureau", authorized the Secretary to fix the compensation of the employees, and limited the base rates to not more than the maximum scheduled rate for GS-12.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-448 effective on first day of first month which begins later than ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88-448.

§328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations

Subject to approval of the President, and without charge to the National Weather Service, the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy are authorized to transfer to the National Weather Service equipment and supplies which are surplus to the needs of their respective Departments and necessary for the establishment, maintenance, and operation of Arctic weather stations.

(June 2, 1948, ch. 373, §4, 62 Stat. 286; 1965 Reorg. Plan No. 2, 1970 eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2, of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of 1970 Reorg. Plan No. 2, redesignated Bureau of the Budget as Office of Management and Budget.

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25-5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§329. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 85-469, title I, §101, June 25, 1958, 72 Stat. 234; Pub. L. 86-88, title I, §101, July 13, 1959, 73 Stat. 207, which prescribed the maximum base rate of pay for employees conducting meteorological investigations in the Arctic region, was from an appropriation act and was omitted in view of section 327 of this title which authorizes the Secretary of Commerce to establish the rates of compensation for such personnel. Provisions of this section were repeated in Pub. L. 86-451, title I, §101, May 13, 1960, 74 Stat. 99.

CHAPTER 9A—WEATHER MODIFICATION ACTIVITIES OR ATTEMPTS; REPORTING REQUIREMENT

Sec.

- 330. Definitions.
- 330a. Report requirement; form; information; time of submission.
- 330b. Duties of Secretary.
- 330c. Authority of Secretary.
- 330d. Violation; penalty.
- 330e. Authorization of appropriations.

§330. Definitions

As used in this chapter—

- (1) The term "Secretary" means the Secretary of Commerce.
- (2) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, who is performing weather modification activities, except where acting solely as an employee, agent, or independent contractor of the Federal Government.
- (3) The term "weather modification" means any activity performed with the intention of

producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(4) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(Pub. L. 92-205, §1, Dec. 18, 1971, 85 Stat. 735.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 92-205, which is classified to this chapter, is popularly known as the "Weather Modification Reporting Act of 1972".

NATIONAL WEATHER MODIFICATION POLICY ACT OF 1976

Pub. L. 94-490, §§1-6(a), Oct. 13, 1976, 90 Stat. 2359-2361, provided:

"[SECTION 1]. That this Act may be cited as the National Weather Modification Policy Act of 1976.

"SEC. 2. DECLARATION OF POLICY.

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) Weather-related disasters and hazards, including drought, hurricanes, tornadoes, hail, lightning, fog, floods, and frost, result in substantial human suffering and loss of life, billions of dollars of annual economic losses to owners of crops and other property, and substantial financial loss to the United States Treasury;

"(2) Weather modification technology has significant potential for preventing, diverting, moderating, or ameliorating the adverse effects of such disasters and hazards and enhancing crop production and the availability of water;

"(3) The interstate nature of climatic and related phenomena, the severe economic hardships experienced as the result of occasional drought and other adverse meteorological conditions, and the existing role and responsibilities of the Federal Government with respect to disaster relief, require appropriate Federal action to prevent or alleviate such disasters and hazards; and

"(4) Weather modification programs may have long-range and unexpected effects on existing climatic patterns which are not confined by national boundaries.

"(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to develop a comprehensive and coordinated national weather modification policy and a national program of weather modification research and development—

"(1) to determine the means by which deliberate weather modification can be used at the present time to decrease the adverse impact of weather on agriculture, economic growth, and the general public welfare, and to determine the potential for weather modification;

"(2) to conduct research into those scientific areas considered most likely to lead to practical techniques for drought prevention or alleviation and other forms of deliberate weather modification;

"(3) to develop practical methods and devices for weather modification;

"(4) to make weather modification research findings available to interested parties;

"(5) to assess the economic, social, environmental, and legal impact of an operational weather modification program;

"(6) to develop both national and international mechanisms designed to minimize conflicts which may arise with respect to the peaceful uses of weather modification; and

"(7) to integrate the results of existing experience and studies in weather modification activities into model codes and agreements for regulation of domestic and international weather modification activities.

"SEC. 3. DEFINITIONS.

"As used in this Act:

"(1) The term 'Secretary' means the Secretary of Commerce.

"(2) The term 'State' means any State of the United States, the District of Columbia, or any Commonwealth, territory, or possession of the United States.

"(3) The term 'weather modification' means any activity performed with the intention and expectation of producing changes in precipitation, wind, fog, lightning, and other atmospheric phenomena.

"SEC. 4. STUDY.

"The Secretary shall conduct a comprehensive investigation and study of the state of scientific knowledge concerning weather modification, the present state of development of weather modification technology, the problems impeding effective implementation of weather modification technology, and other related matters. Such study shall include—

"(1) a review and analysis of the present and past research efforts to establish practical weather modification technology, particularly as it relates to reducing loss of life and crop and property destruction;

"(2) a review and analysis of research needs in weather modification to establish areas in which more research could be expected to yield the greatest return in terms of practical weather modification technology;

"(3) a review and analysis of existing studies to establish the probable economic importance to the United States in terms of agricultural production, energy, and related economic factors if the present weather modification technology were to be effectively implemented;

"(4) an assessment of the legal, social, and ecological implications of expanded and effective research and operational weather modification projects;

"(5) formulation of one or more options for a model regulatory code for domestic weather modification activities, such code to be based on a review and analysis of experience and studies in this area, and to be adaptable to State and national needs;

"(6) recommendations concerning legislation desirable at all levels of government to implement a national weather modification policy and program;

"(7) a review of the international importance and implications of weather modification activities by the United States;

"(8) a review and analysis of present and past funding for weather modification from all sources to determine the sources and adequacy of funding in the light of the needs of the Nation;

"(9) a review and analysis of the purpose, policy, methods, and funding of the Federal departments and agencies involved in weather modification and of the existing interagency coordination of weather modification research efforts;

"(10) a review and analysis of the necessity and feasibility of negotiating an international agreement concerning the peaceful uses of weather modification; and

"(11) formulation of one or more options for a model international agreement concerning the peaceful uses of weather modification and the regulation of national weather modification activities; and a review and analysis of the necessity and feasibility of negotiating such an agreement.

"SEC. 5. REPORT.

"(a) IN GENERAL.—The Secretary shall prepare and submit to the President and the Congress, within 1 year after the date of enactment of this Act [Oct. 13, 1976], a final report on the findings, conclusions, and recommendations of the study conducted pursuant to section 4. Such report shall include:

"(1) a summary of the findings made with respect to each of the areas of investigation specified in section 4;

"(2) other findings which are pertinent to the determination and implementation of a national policy on weather modifications;

"(3) a recommended national policy on weather modification and a recommended national weather modification research and development program which is consistent with, and likely to contribute to, achieving the objectives of such policy;

"(4) recommendations for levels of Federal funding sufficient to support adequately a national weather modification research and development program;

"(5) recommendations for any changes in the organization and involvement of Federal departments and agencies in weather modification which may be needed to implement effectively the recommended national policy on weather modification and the recommended research and development program; and

"(6) recommendations for any regulatory and other legislation which may be required to implement such policy and program or for any international agreement which may be appropriate concerning the peaceful uses of weather modification, including recommendations concerning the dissemination, refinement, and possible implementation of the model domestic code and international agreement developed under the specifications of section 4.

Each department, agency, and other instrumentality of the Federal Government is authorized and directed to furnish the Secretary any information which the Secretary deems necessary to carry out his functions under this Act.

"(b) OPERATION AND CONSULTATION.—The Secretary shall solicit and consider the views of State agencies, private firms, institutions of higher learning, and other interested persons and governmental entities in the conduct of the study required by section 4, and in the preparation of the report required by subsection (a).

"SEC. 6. AUTHORIZATION FOR APPROPRIATIONS.

"(a) There is authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act not to exceed \$1,000,000."

§330a. Report requirement; form; information; time of submission

No person may engage, or attempt to engage, in any weather modification activity in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt.

(Pub. L. 92-205, §2, Dec. 18, 1971, 85 Stat. 736.)

§330b. Duties of Secretary

(a) Records, maintenance; summaries, publication

The Secretary shall maintain a record of weather modification activities, including attempts, which take place in the United States and shall publish summaries thereof from time to time as he determines.

(b) Public availability of reports, documents, and other information

All reports, documents, and other information received by the Secretary under the provisions of this chapter shall be made available to the public to the fullest practicable extent.

(c) Disclosure of confidential information; prohibition; exceptions

In carrying out the provisions of this section, the Secretary shall not disclose any information referred to in section 1905 of title 18 and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety.

(Pub. L. 92-205, §3, Dec. 18, 1971, 85 Stat. 736.)

§330c. Authority of Secretary

(a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority

The Secretary may obtain from any person whose activities relate to weather modification by rule, subpoena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping and furnishing of such reports and records, and may make such inspection of the books, records, and other writings and premises and property of any person as may be deemed necessary or appropriate by him to carry out the provisions of this chapter, but this authority shall not be exercised to obtain any information with respect to which adequate and authoritative data are available from any Federal agency.

(b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts

In case of contumacy by, or refusal to obey a subpoena served upon any person pursuant to this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 92-205, §4, Dec. 18, 1971, 85 Stat. 736.)

§330d. Violation; penalty

Any person who knowingly and willfully violates section 330a of this title, or any rule issued thereunder, shall upon conviction thereof be fined not more than \$10,000.

(Pub. L. 92-205, §5, Dec. 18, 1971, 85 Stat. 736.)

§330e. Authorization of appropriations

There are authorized to be appropriated \$150,000 for the fiscal year ending June 30, 1972, \$200,000 each for the fiscal years 1973 through 1980, \$100,000 for the fiscal year ending September 30, 1981, \$100,000 for the fiscal year ending September 30, 1986, \$100,000 for the fiscal year ending September 30, 1987, \$100,000 for the fiscal year ending September 30, 1988, to carry out the provisions of this chapter.

(Pub. L. 92-205, §6, Dec. 18, 1971, 85 Stat. 736; Pub. L. 93-436, Oct. 5, 1974, 88 Stat. 1212; Pub. L. 94-490, §6(b), Oct. 13, 1976, 90 Stat. 2362; Pub. L. 96-547, §2, Dec. 18, 1980, 94 Stat. 3217; Pub. L. 99-272, title VI, §6081, Apr. 7, 1986, 100 Stat. 135.)

EDITORIAL NOTES

AMENDMENTS

1986—Pub. L. 99-272 authorized appropriation of \$100,000 for fiscal years ending September 30, 1986, 1987, and 1988.

1980—Pub. L. 96-547 amended Pub. L. 96-547, thereby inserting provisions setting forth authorization of appropriations for fiscal year ending Sept. 30, 1981.

1976—Pub. L. 94-490 authorized appropriation of \$200,000 for each of fiscal years 1978, 1979, and 1980.

1974—Pub. L. 93-436 extended authorization of appropriation of \$200,000 for each of fiscal years ending June 30, 1975, 1976, and 1977.

CHAPTER 10—WAR FINANCE CORPORATION

§§331 to 374. Omitted

EDITORIAL NOTES

CODIFICATION

Sections referred to War Finance Corporation. They were derived from acts Apr. 5, 1918, ch. 45, §§1-19, 24-28, 300, 302-304, 40 Stat. 506-512, 514, 515; Mar. 3, 1919, ch. 100, §10, 40 Stat. 1314; Jan. 4, 1921, ch. 9, 41 Stat. 1084; Aug. 24, 1921, ch. 80, §§1-3, 5-7, 42 Stat. 181-184; June 10, 1922, ch. 215, §§2, 3, 42 Stat. 634; Mar. 4, 1923, ch. 252, title V, §§502, 503, 42 Stat. 1481; Feb. 20, 1924, ch. 37, §§1-4, 43 Stat. 14, 15; Apr. 4, 1928, ch. 315, 45 Stat. 405; May 29, 1928, ch. 901, §1(116), 45 Stat. 995; Mar. 1, 1929, ch. 444, 45 Stat. 1442; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704.

War Finance Corporation was abolished and Secretary of Treasury was directed to complete and wind up its affairs and dispose of its assets in accordance with act Mar. 1, 1929, ch. 444, 45 Stat. 1442, not later than Dec. 31, 1939. All its functions, property, and obligations not previously transferred by statute to Secretary of Treasury were transferred to Department of Treasury by Reorg. Plan No. II, of 1939, §2(c), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1432, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 401 to 404 of Reorg. Plan No. II of 1939 for provisions relating to transfer of functions, records, property, personnel, and funds.

In a letter addressed to the Speaker of the House of Representatives and dated October 26, 1942, the Acting Secretary of the Treasury transmitted the final report of the affairs of the War Finance Corporation covering

the period of its existence from April 5, 1918 through June 30, 1939.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Sections 1, 2, 5 to 19, 200 to 206, 300 and 302 to 306 of act Apr. 5, 1918, ch. 45, 40 Stat. 506 to 512, 514, 515, formerly classified to sections 331 to 347 and 361 to 365 of this title, were repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 643.

Sections 3 and 4 of act Apr. 5, 1918, ch. 45, 40 Stat. 507, which authorized the appointment of Government employees to membership on the Board of Directors of the War Finance Corporation and provided for their compensation, previously omitted from this Code, were repealed by Pub. L. 88-448, title IV, §402(a)(16), Aug. 19, 1964, 78 Stat. 493.

Sections 9 and 10 of act Mar. 3, 1919, ch. 100, 40 Stat. 1313, 1314, formerly classified to section 343 of this title, were repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 644.

Act Jan. 4, 1921, ch. 9, 41 Stat. 1084, formerly classified to section 373 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 644.

Act Aug. 24, 1921, ch. 80, 42 Stat. 181, formerly classified to sections 331, 340, 341, 343, 348 to 352 and 364 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Act June 10, 1922, ch. 215, 42 Stat. 634, formerly classified to sections 340 and 343 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Sections 501 to 503 of act Mar. 4, 1923, ch. 252, 42 Stat. 1480, 1481, formerly classified to sections 340 and 343 of this title, were repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Act Feb. 20, 1924, ch. 37, 43 Stat. 14, formerly classified to sections 343, 371 and 372 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Act Apr. 4, 1928, ch. 315, 45 Stat. 405, formerly classified to section 331 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 647.

Act May 29, 1928, ch. 901, §1(116), 45 Stat. 995, formerly classified to section 347 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 647.

Act Mar. 1, 1929, ch. 444, 45 Stat. 1442, formerly classified to section 374 of this title, was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 647.

CHAPTER 10A—COLLECTION OF STATE CIGARETTE TAXES

Sec.	
375.	Definitions.
376.	Reports to State tobacco tax administrator.
376a.	Delivery sales.
377.	Penalties.
378.	Enforcement.

§375. Definitions

As used in this chapter, the following definitions apply:

(1) Attorney general

The term "attorney general", with respect to a State, means the attorney general or other chief law enforcement officer of the State.

(2) Cigarette

(A) In general

The term "cigarette"—

- (i) has the meaning given that term in section 2341 of title 18; and
- (ii) includes—
 - (I) roll-your-own tobacco (as defined in section 5702 of title 26); and
 - (II) an electronic nicotine delivery system.

(B) Exception

The term "cigarette" does not include a cigar (as defined in section 5702 of title 26).

(3) Common carrier

The term "common carrier" means any person (other than a local messenger service or the United States Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the United States.

(4) Consumer

The term "consumer"—

(A) means any person that purchases cigarettes or smokeless tobacco; and

(B) does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

(5) Delivery sale

The term "delivery sale" means any sale of cigarettes or smokeless tobacco to a consumer if—

(A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

(6) Delivery seller

The term "delivery seller" means a person who makes a delivery sale.

(7) Electronic nicotine delivery system

The term "electronic nicotine delivery system"—

(A) means any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device;

(B) includes—

(i) an e-cigarette;

(ii) an e-hookah;

(iii) an e-cigar;

(iv) a vape pen;

(v) an advanced refillable personal vaporizer;

(vi) an electronic pipe; and

(vii) any component, liquid, part, or accessory of a device described in subparagraph (A), without regard to whether the component, liquid, part, or accessory is sold separately from the device; and

(C) does not include a product that is—

(i) approved by the Food and Drug Administration for—

(I) sale as a tobacco cessation product; or

(II) any other therapeutic purpose; and

(ii) marketed and sold solely for a purpose described in clause (i).

(8) Indian country

The term "Indian country"—

(A) has the meaning given that term in section 1151 of title 18, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

(B) includes any other land held by the United States in trust or restricted status for one or

more Indian tribes.

(9) Indian tribe

The term "Indian tribe", "tribe", or "tribal" refers to an Indian tribe as defined in section 5304(e) of title 25 or as listed pursuant to section 5131 of title 25.

(10) Interstate commerce

(A) In general

The term "interstate commerce" means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

(B) Into a State, place, or locality

A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined in this paragraph, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.

(11) Person

The term "person" means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.

(12) State

The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(13) Smokeless tobacco

The term "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

(14) Tobacco tax administrator

The term "tobacco tax administrator" means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

(15) Use

The term "use" includes the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.

(Oct. 19, 1949, ch. 699, §1, as added Pub. L. 111–154, §2(a), Mar. 31, 2010, 124 Stat. 1088; amended Pub. L. 116–260, div. FF, title VI, §602(a)(1), Dec. 27, 2020, 134 Stat. 3136.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 375, act Oct. 19, 1949, ch. 699, §1, 63 Stat. 884; Aug. 9, 1955, ch. 695, §1, 69 Stat. 627, set out definitions for this chapter, prior to repeal by Pub. L. 111–154, §2(a), Mar. 31, 2010, 124 Stat. 1088.

AMENDMENTS

2020—Par. (2)(A)(ii). Pub. L. 116–260, §602(a)(1)(A), substituted "includes—" for "includes", inserted subcl. (I) designation before "roll-your-own tobacco", and added subcl. (II).

Pars. (7) to (15). Pub. L. 116–260, §602(a)(1)(B), (C), added par. (7) and redesignated former pars. (7) to (14) as (8) to (15), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. FF, title VI, §602(b), Dec. 27, 2020, 134 Stat. 3137, provided that: "This section [amending this section and section 376a of this title and enacting provisions set out as a note under this section], and the amendments made by this section, shall take effect on the date that is 90 days after the date of enactment of this Act [Dec. 27, 2020]."

EFFECTIVE DATE

Pub. L. 111–154, §6, Mar. 31, 2010, 124 Stat. 1110, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this Act [see Short Title of 2010 Amendment note below] shall take effect on the date that is 90 days after the date of enactment of this Act [Mar. 31, 2010].

"(b) BATFE AUTHORITY.—The amendments made by section 4 [amending section 2343 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of enactment of this Act."

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–260, div. FF, title VI, §601, Dec. 27, 2020, 134 Stat. 3136, provided that: "This title [amending this section and section 376a of this title and enacting provisions set out as notes under this section and section 1716E of Title 18, Crimes and Criminal Procedure] may be cited as the 'Preventing Online Sales of E-Cigarettes to Children Act'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–154, §1(a), Mar. 31, 2010, 124 Stat. 1087, provided that: "This Act [enacting this section, sections 376a, 377, and 378 of this title, and section 1716E of Title 18, Crimes and Criminal Procedure, amending section 376 of this title and section 2343 of Title 18, repealing former sections 375, 377, and 378 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Prevent All Cigarette Trafficking Act of 2009' or 'PACT Act'."

SHORT TITLE

Act Oct. 19, 1949, ch. 699, 63 Stat. 884, which is classified generally to this chapter, is popularly known as the Jenkins Act.

SEVERABILITY

Pub. L. 111–154, §7, Mar. 31, 2010, 124 Stat. 1111, provided that: "If any provision of this Act [see Short Title of 2010 Amendment note above], or any amendment made by this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of the Act to any other person or circumstance shall not be affected thereby."

RULE OF CONSTRUCTION

Pub. L. 116–260, div. FF, title VI, §602(c), Dec. 27, 2020, 134 Stat. 3137, provided that: "Nothing in this section [amending this section and section 376a of this title and enacting provisions set out as a note under this section], or an amendment made by this section, may be construed to affect or otherwise alter any provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), including its implementing regulations."

FINDINGS AND PURPOSE

Pub. L. 111–154, §1(b), (c), Mar. 31, 2010, 124 Stat. 1087, 1088, provided that:

"(b) FINDINGS.—Congress finds that—

"(1) the sale of illegal cigarettes and smokeless tobacco products significantly reduces Federal, State, and local government revenues, with Internet sales alone accounting for billions of dollars of lost Federal, State, and local tobacco tax revenue each year;

"(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from trafficking in illegal cigarettes or counterfeit cigarette tax stamps;

"(3) terrorist involvement in illicit cigarette trafficking will continue to grow because of the large profits such organizations can earn;

"(4) the sale of illegal cigarettes and smokeless tobacco over the Internet, and through mail, fax, or phone orders, makes it cheaper and easier for children to obtain tobacco products;

"(5) the majority of Internet and other remote sales of cigarettes and smokeless tobacco are being made without adequate precautions to protect against sales to children, without the payment of applicable taxes, and without complying with the nominal registration and reporting requirements in existing Federal law;

"(6) unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States;

"(7) with rising State and local tobacco tax rates, the incentives for the illegal sale of cigarettes and

smokeless tobacco have increased;

"(8) the number of active tobacco investigations being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives rose to 452 in 2005;

"(9) the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005; and

"(10) the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.

"(c) PURPOSES.—It is the purpose of this Act [see Short Title of 2010 Amendment note above] to—

"(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;

"(2) create strong disincentives to illegal smuggling of tobacco products;

"(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;

"(4) make it more difficult for cigarette and smokeless tobacco traffickers to engage in and profit from their illegal activities;

"(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and

"(6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal Internet or contraband sales."

EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS

Pub. L. 111–154, §5, Mar. 31, 2010, 124 Stat. 1109, provided that:

"(a) IN GENERAL.—Nothing in this Act [see Short Title of 2010 Amendment note above] or the amendments made by this Act shall be construed to amend, modify, or otherwise affect—

"(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) [now 25 U.S.C. 5304(e)] relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

"(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian country;

"(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian tribes, tribal members, tribal enterprises, or in Indian country;

"(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; or

"(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

"(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

"(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

"(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

"(3) establishes cooperative programs for the administration of such laws.

"(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Nothing in this Act or the amendments made by this Act shall be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

"(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act shall prohibit, limit, or restrict enforcement by the Attorney General of the United States of this Act or an amendment made by this Act within Indian country.

"(e) AMBIGUITY.—Any ambiguity between the language of this section or its application and any other provision of this Act shall be resolved in favor of this section.

"(f) DEFINITIONS.—In this section—

"(1) the term 'Indian country' has the meaning given that term in section 1 of the Jenkins Act [Act of

October 19, 1949, 15 U.S.C. 375], as amended by this Act; and

"(2) the term 'tribal enterprise' means any business enterprise, regardless of whether incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribes."

§376. Reports to State tobacco tax administrator

(a) Contents

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment, shall—

(1) first file with the Attorney General of the United States and with the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and

(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.

(b) Presumptive evidence

The fact that any person ships or delivers for shipment any cigarettes or smokeless tobacco shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence that such cigarettes or smokeless tobacco were sold, or transferred for profit, by such person.

(c) Use of information

A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use the memorandum or invoice solely for the purposes of the enforcement of this chapter and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in the memorandum or invoice except as required for such purposes.

(Oct. 19, 1949, ch. 699, §2, 63 Stat. 884; Aug. 15, 1953, ch. 512, title II, §201(a), 67 Stat. 617; Aug. 9, 1955, ch. 695, §1, 69 Stat. 627; Pub. L. 111–154, §2(b), Mar. 31, 2010, 124 Stat. 1090.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–154, §2(b)(1), (2)(A), inserted heading and, in introductory provisions, substituted "cigarettes or smokeless tobacco" for "cigarettes" wherever appearing, ", transfers, or ships" for "or

transfers", and ", transfer, or shipment" for "or transfer and shipment", inserted ", locality, or Indian country of an Indian tribe" after "a State", and struck out "to other than a distributor licensed by or located in such State," after "use of cigarettes or smokeless tobacco,".

Subsec. (a)(1). Pub. L. 111–154, §2(b)(2)(B), substituted "with the Attorney General of the United States and with the tobacco tax administrators of the State and place" for "with the tobacco tax administrator of the State" and ", as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;" for "; and".

Subsec. (a)(2). Pub. L. 111–154, §2(b)(1), (2)(C), substituted "cigarettes or smokeless tobacco" for "cigarettes" and "the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and" for "and the quantity thereof."

Subsec. (a)(3). Pub. L. 111–154, §2(b)(2)(D), added par. (3).

Subsec. (b). Pub. L. 111–154, §2(b)(1), (3), inserted heading, substituted "cigarettes or smokeless tobacco" for "cigarettes" in two places and "evidence that" for "evidence (1) that", and struck out ", and (2) that such sale or transfer was to other than a distributor licensed by or located in such State" after "by such person".

Subsec. (c). Pub. L. 111–154, §2(b)(4), added subsec. (c).

1955—Act Aug. 9, 1955, designated existing provisions as subsec. (a), inserted provisions requiring filing of a statement of name, trade name, address, and places of business by persons who sell or transfer for profit cigarettes in interstate commerce or by persons who advertise or offer cigarettes for such sale or transfer, and added subsec. (b).

1953—Act Aug. 15, 1953, required that the memorandum or copy of invoice be filed with, rather than forwarded to, the tobacco tax administrator.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–154 effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as a note under section 375 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 695, §2, 69 Stat. 628, provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [amending this section and former sections 375, 377, and 378 of this title] shall take effect thirty days after the date of its enactment [Aug. 9, 1955].

"(b) The provisions of section 2(a) of the Act of October 19, 1949, as amended by this Act [15 U.S.C. 376(a)], insofar as it requires the filing of memoranda or copies of invoices with the appropriate tax administrator for shipments of cigarettes into the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico, shall apply in respect of memoranda or copies of invoices covering shipments made during calendar months beginning after the month in which this Act is enacted [August 1955]."

EFFECTIVE DATE OF 1953 AMENDMENT

Act Aug. 15, 1953, ch. 512, title II, §201(b), 67 Stat. 617, provided that: "The amendment made by subsection (a) [amending this section] shall apply only in respect of memoranda or copies of invoices covering shipments made during the calendar month in which this Act is enacted [August 1953] and subsequent calendar months."

§376a. Delivery sales

(a) In general

With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

- (1) the shipping requirements set forth in subsection (b);
- (2) the recordkeeping requirements set forth in subsection (c);
- (3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific State and place, including

laws imposing—

- (A) excise taxes;
- (B) licensing and tax-stamping requirements;
- (C) restrictions on sales to minors; and
- (D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

(4) the tax collection requirements set forth in subsection (d).

(b) Shipping and packaging

(1) Required statement

For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: "CIGARETTES/NICOTINE/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS".

(2) Failure to label

Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

(3) Weight restriction

A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

(4) Age verification

(A) In general

A delivery seller who mails or ships tobacco products—

(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

(ii) shall use a method of mailing or shipping that requires—

(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery; and

(iii) shall not accept a delivery sale order from a person without—

(I) obtaining the full name, birth date, and residential address of that person; and

(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the

purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

(B) Limitation

No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

(c) Records

(1) In general

Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 376(a)(2) of this title, organized by the State, and within the State, by the city or town and by zip code, into which the delivery sale is so made.

(2) Record retention

Records of a delivery sale shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

(3) Access for officials

Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of the local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this chapter.

(d) Delivery

(1) In general

Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

(2) Exception

Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

(e) List of unregistered or noncompliant delivery sellers

(1) In general

(A) Initial list

Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General of the United States pursuant to section 376(a) of this title, or that are otherwise not in compliance with this chapter, and—

(i) distribute the list to—

- (I) the attorney general and tax administrator of every State;
- (II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and
- (III) any other person that the Attorney General of the United States determines can promote the effective enforcement of this chapter; and

(ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

(B) List contents

To the extent known, the Attorney General of the United States shall include, for each delivery seller on the list described in subparagraph (A)—

- (i) all names the delivery seller uses or has used in the transaction of its business or on packages delivered to customers;
- (ii) all addresses from which the delivery seller does or has done business, or ships or has shipped cigarettes or smokeless tobacco;
- (iii) the website addresses, primary e-mail address, and phone number of the delivery seller; and
- (iv) any other information that the Attorney General of the United States determines would facilitate compliance with this subsection by recipients of the list.

(C) Updating

The Attorney General of the United States shall update and distribute the list described in subparagraph (A) at least once every 4 months, and may distribute the list and any updates by regular mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

(D) State, local, or tribal additions

The Attorney General of the United States shall include in the list described in subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (6), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information, and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (6).

(E) Accuracy and completeness of list of noncomplying delivery sellers

In preparing and revising the list described in subparagraph (A), the Attorney General of the United States shall—

- (i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that a delivery seller is not in compliance with this chapter;
- (ii) not later than 14 days before including a delivery seller on the list, make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, which shall cite the relevant provisions of this chapter and the specific reasons for which the delivery seller is being placed on the list;
- (iii) provide an opportunity to the delivery seller to challenge placement on the list;
- (iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and
- (v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of the determination.

(F) Confidentiality

The list described in subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list and may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with a listed delivery seller the inclusion of the delivery seller on the list and the resulting effects on any services requested by the listed delivery seller.

(2) Prohibition on delivery

(A) In general

Commencing on the date that is 60 days after the date of the initial distribution or availability of the list described in paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

- (i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;
- (ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or
- (iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

(B) Implementation of updates

Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to the corrections or updates.

(3) Exemptions

(A) In general

Subsection (b)(2) and any requirements or restrictions placed directly on common carriers under this subsection, including subparagraphs (A) and (B) of paragraph (2), shall not apply to a common carrier that—

- (i) is subject to a settlement agreement described in subparagraph (B); or
- (ii) if a settlement agreement described in subparagraph (B) to which the common carrier is a party is terminated or otherwise becomes inactive, is administering and enforcing policies and practices throughout the United States that are at least as stringent as the agreement.

(B) Settlement agreement

A settlement agreement described in this subparagraph—

- (i) is a settlement agreement relating to tobacco product deliveries to consumers; and
- (ii) includes—

(I) the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and FedEx Ground Package Systems, Inc. on or about February 3, 2006, if each of those agreements is honored throughout the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

(II) any other active agreement between a common carrier and a State that operates throughout the United States to ensure that no deliveries of cigarettes or smokeless tobacco

shall be made to consumers or illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the States and localities where the consumers are located of all taxes on the tobacco products.

(4) Shipments from persons on list

(A) In general

If a common carrier or other delivery service delays or interrupts the delivery of a package in the possession of the common carrier or delivery service because the common carrier or delivery service determines or has reason to believe that the person ordering the delivery is on a list described in paragraph (1)(A) and that clauses (i), (ii), and (iii) of paragraph (2)(A) do not apply—

(i) the person ordering the delivery shall be obligated to pay—

(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover any extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall offer to provide the package and its contents to a Federal, State, or local law enforcement agency.

(B) Records

A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted under this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

(C) Confidentiality

Any person receiving records under subparagraph (B) shall—

(i) use the records solely for the purposes of the enforcement of this chapter and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco; and

(ii) keep confidential any personal information in the records not otherwise required for such purposes.

(5) Preemption

(A) In general

No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

(B) Relationship to other laws

Except as provided in subparagraph (C), nothing in this paragraph shall be construed to nullify, expand, restrict, or otherwise amend or modify—

- (i) section 14501(c)(1) or 41713(b)(4) of title 49;
- (ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers; or
- (iii) any provision of State, local, or tribal law regulating common carriers that is described in section 14501(c)(2) or 41713(b)(4)(B) of title 49.

(C) State laws prohibiting delivery sales

(i) In general

Except as provided in clause (ii), nothing in the Prevent All Cigarette Trafficking Act of 2009, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences.

(ii) Exemptions

No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier is not exempt under paragraph (3) of this subsection.

(6) State, local, and tribal additions

(A) In general

Any State, local, or tribal government shall provide the Attorney General of the United States with—

(i) all known names, addresses, website addresses, and other primary contact information of any delivery seller that—

(I) offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land; and

(II) has failed to register with or make reports to the respective tax administrator as required by this chapter, or that has been found in a legal proceeding to have otherwise failed to comply with this chapter; and

(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

(B) Updates

Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

(C) Removal after withdrawal

Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list described in paragraph (1)(A) any persons that are on the list solely because of the prior submissions of the government of the list of the government of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

(7) Deadline to incorporate additions

The Attorney General of the United States shall—

(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (6) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and

(B) distribute any list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

(8) Notice to delivery sellers

Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list or update, with that notice citing the relevant provisions of this chapter.

(9) Limitations

(A) In general

Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

(ii) determine whether a person ordering a delivery is in compliance with this chapter; or

(iii) open or inspect, pursuant to this chapter, any package being delivered to determine its contents.

(B) Alternate names

Any common carrier or other person making a delivery subject to this subsection—

(i) shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the related delivery restrictions; and

(ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is on the list and is using a different name or address to evade the delivery restrictions of paragraph (2).

(C) Penalties

Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49 or any other provision of law for—

(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list described in paragraph (1)(A);

(ii) refusing, as a matter of regular practice and procedure, to make any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this chapter.

(D) Other limits

Section 376 of this title and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

(f) Presumption

For purposes of this chapter, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller. (Oct. 19, 1949, ch. 699, §2A, as added Pub. L. 111–154, §2(c), Mar. 31, 2010, 124 Stat. 1091; amended Pub. L. 116–260, div. FF, title VI, §602(a)(2), Dec. 27, 2020, 134 Stat. 3137.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Prevent All Cigarette Trafficking Act of 2009, referred to in subsec. (e)(1)(A), (5)(C)(i), is Pub. L. 111–154, Mar. 31, 2010, 124 Stat. 1087, also known as the PACT Act. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 375 of this title and Tables.

For the date subsection (e) of this section goes into effect, referred to in subsec. (e)(1)(A), see Effective Date note below.

AMENDMENTS

2020—Subsec. (b)(1). Pub. L. 116–260 inserted "NICOTINE/" after "CIGARETTES/".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–260 effective on the date that is 90 days after Dec. 27, 2020, see section 602(b) of Pub. L. 116–260, set out as a note under section 375 of this title.

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

§377. Penalties

(a) Criminal penalties

(1) In general

Except as provided in paragraph (2), whoever knowingly violates this chapter shall be imprisoned for not more than 3 years, fined under title 18, or both.

(2) Exceptions

(A) Governments

Paragraph (1) shall not apply to a State, local, or tribal government.

(B) Delivery violations

A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed knowingly—

(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

(b) Civil penalties

(1) In general

Except as provided in paragraph (3), whoever violates this chapter shall be subject to a civil penalty in an amount not to exceed—

(A) in the case of a delivery seller, the greater of—

- (i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or
- (ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of the delivery seller during the 1-year period ending on the date of the violation.

(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$5,000 for any violation within 1 year of a prior violation.

(2) Relation to other penalties

A civil penalty imposed under paragraph (1) for a violation of this chapter shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

(3) Exceptions

(A) Delivery violations

An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed intentionally—

- (i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or
- (ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

(B) Other limitations

No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title if—

- (i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or
- (ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).

(Oct. 19, 1949, ch. 699, §3, as added Pub. L. 111–154, §2(d), Mar. 31, 2010, 124 Stat. 1100.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 377, act Oct. 19, 1949, ch. 699, §3, 63 Stat. 885; Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which related to penalties for violations of any provision of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111–154, §§2(d), 6, Mar. 31, 2010, 124 Stat. 1100, 1110.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

§378. Enforcement

(a) In general

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter and to provide other appropriate injunctive or equitable relief, including money damages, for

the violations.

(b) Authority of the Attorney General

The Attorney General of the United States shall administer and enforce this chapter.

(c) State, local, and tribal enforcement

(1) In general

(A) Standing

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may bring an action in a United States district court to prevent and restrain violations of this chapter by any person or to obtain any other appropriate relief from any person for violations of this chapter, including civil penalties, money damages, and injunctive or other equitable relief.

(B) Sovereign immunity

Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

(2) Provision of information

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may provide evidence of a violation of this chapter by any person not subject to State, local, or tribal government enforcement actions for violations of this chapter to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce this chapter.

(3) Use of penalties collected

(A) In general

There is established a separate account in the Treasury known as the "PACT Anti-Trafficking Fund". Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the Federal Government in enforcing this chapter shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing this chapter and other laws relating to contraband tobacco products.

(B) Allocation of funds

Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

(4) Nonexclusivity of remedy

(A) In general

The remedies available under this section and section 377 of this title are in addition to any other remedies available under Federal, State, local, tribal, or other law.

(B) State court proceedings

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

(C) Tribal court proceedings

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right

of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

(D) Local government enforcement

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

(d) Persons dealing in tobacco products

Any person who holds a permit under section 5712 of title 26 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this chapter by any person other than a State, local, or tribal government.

(e) Notice

(1) Persons dealing in tobacco products

Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

(2) State, local, and tribal actions

It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

(f) Public notice

(1) In general

The Attorney General of the United States shall make available to the public, by posting information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States, under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

(2) Reports to Congress

Not later than 1 year after March 31, 2010, and every year thereafter until the date that is 5 years after March 31, 2010, the Attorney General of the United States shall submit to Congress a report containing the information described in paragraph (1).

(Oct. 19, 1949, ch. 699, §4, as added Pub. L. 111–154, §2(e), Mar. 31, 2010, 124 Stat. 1101.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 378, act Oct. 19, 1949, ch. 699, §4, as added Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which provided U.S. district courts with jurisdiction to prevent and restrain violations of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111–154, §§2(e), 6, Mar. 31, 2010, 124 Stat. 1101, 1110.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

CHAPTER 10B—STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

SUBCHAPTER I—NET INCOME TAXES

Sec.

- 381. Imposition of net income tax.
- 382. Assessment of net income taxes.
- 383. "Net income tax" defined.
- 384. Separability.

SUBCHAPTER II—DISCRIMINATORY TAXES

- 391. Tax on or with respect to generation or transmission of electricity.

SUBCHAPTER I—NET INCOME TAXES

§381. Imposition of net income tax

(a) Minimum standards

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
- (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) Domestic corporations; persons domiciled in or residents of a State

The provisions of subsection (a) shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

- (1) any corporation which is incorporated under the laws of such State; or
- (2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) Sales or solicitation of orders for sales by independent contractors

For purposes of subsection (a), a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, or tangible personal property.

(d) Definitions

For purposes of this section—

- (1) the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and
- (2) the term "representative" does not include an independent contractor.

(Pub. L. 86-272, title I, §101, Sept. 14, 1959, 73 Stat. 555.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

STUDY AND REPORT BY CONGRESSIONAL COMMITTEES OF STATE TAXATION FROM INTERSTATE COMMERCE

Title II of Pub. L. 86-272, as amended by Pub. L. 87-17, Apr. 7, 1961, 75 Stat. 41; Pub. L. 87-435, Apr. 21, 1962, 76 Stat. 55; Pub. L. 88-42, June 21, 1963, 77 Stat. 67; Pub. L. 88-286, Mar. 18, 1964, 78 Stat. 166, and repealed by Pub. L. 94-455, title XXI, §2121(a), Oct. 4, 1976, 90 Stat. 1914, provided for a study by the Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or any duly authorized subcommittee thereof, of all matters pertaining to the taxation of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing, and for a report together with their proposals for legislation on or before June 30, 1965.

§382. Assessment of net income taxes

(a) Limitations

No State, or political subdivision thereof, shall have power to assess, after September 14, 1959, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 381 of this title.

(b) Collections

The provisions of subsection (a) shall not be construed—

(1) to invalidate the collection, on or before September 14, 1959, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after September 14, 1959, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

(Pub. L. 86-272, title I, §102, Sept. 14, 1959, 73 Stat. 556.)

§383. "Net income tax" defined

For purposes of this chapter, the term "net income tax" means any tax imposed on, or measured by, net income.

(Pub. L. 86-272, title I, §103, Sept. 14, 1959, 73 Stat. 556.)

§384. Separability

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 86-272, title I, §104, Sept. 14, 1959, 73 Stat. 556.)

SUBCHAPTER II—DISCRIMINATORY TAXES

§391. Tax on or with respect to generation or transmission of electricity

No State, or political subdivision thereof, may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce.

(Pub. L. 86-272, title II, §201, as added Pub. L. 94-455, title XXI, §2121(a), Oct. 4, 1976, 90 Stat. 1914.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 94-455, title XXI, §2121(b), Oct. 4, 1976, 90 Stat. 1914, provided that: "The amendment made by subsection (a) [enacting this section] shall take effect beginning June 30, 1974."

CHAPTER 11—CAUSTIC POISONS

§§401 to 411. Repealed. Pub. L. 86-613, §19, formerly §18, July 12, 1960, 74 Stat. 381; renumbered Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189

Sections 401 to 411, act Mar. 4, 1927, ch. 489, §§1-10, 12, 44 Stat. 1406-1410, prohibited misbranded shipments of dangerous caustic or corrosive substances in interstate or foreign commerce. See chapter 30 [§1261 et seq.] of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Pub. L. 86-613, §19, formerly §18, July 12, 1960, 74 Stat. 381, renumbered and amended by Pub. L. 91-113, §4(a), (b)(2), Nov. 6, 1969, 83 Stat. 189, 190; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041, provided that: "The Federal Caustic Poison Act [sections 401 to 411 of this title] (44 Stat. 1406) is repealed effective at the close of the sixth calendar month after the month of enactment of this Act [July 12, 1960], except that the Federal Caustic Poison Act shall remain in full force and effect with respect to any 'dangerous caustic or corrosive substance' (as defined by that Act) which is an article subject to the Federal Food, Drug, and Cosmetic Act [chapter 9 of title 21] and which is, by virtue of paragraph 2 of section 2(f) of this Act [section 1261(f)(2) of this title], excluded from the term 'hazardous substance' as defined in this Act [chapter 30 of this title]: *Provided*, That, if the Commission, pursuant to section 17(b) of this Act [set out as a note under section 1261 of this title], prescribes an additional period or periods during which violations of this Act [chapter 30 of this title] shall not be enforceable and if such additional period or periods are applicable to violations of this Act [chapter 30 of this title] involving one or more substances defined as 'dangerous caustic or corrosive substances' by the Federal Caustic Poison Act, that Act shall, with respect to such substance or substances, remain in full force and effect during such additional period or periods; *Provided further*, That, with respect to violations, liabilities incurred or appeals taken prior to the close of said sixth month or, if applicable, prior to the expiration of the additional period or periods referred to in the preceding proviso, all provisions of the Federal Caustic Poison Act shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, and appeals."

CHAPTER 12—DISCRIMINATION AGAINST FARMERS' COOPERATIVE ASSOCIATIONS BY BOARDS OF TRADE

- 431. Definitions.
- 432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited.
- 433. Remedies of cooperative association excluded from representation.

§431. Definitions

When used in this chapter (a) the term "agricultural products", means agricultural, horticultural, viticultural, and dairy products, food products of livestock, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.

(b) The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment, except markets designated as contract markets under the Grain Futures Act ¹ [7 U.S.C. 1 et seq.].

(c) The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(d) For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in dealing in agricultural products whereby they are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(e) The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts.

(f) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(Mar. 4, 1927, ch. 508, §1, 44 Stat. 1423.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Grain Futures Act, referred to in subsec. (b), was act Sept. 21, 1922, ch. 369, 42 Stat. 998. The Act was renamed the Commodity Exchange Act by act June 15, 1936, ch. 545, §1, 49 Stat. 1491, and is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

¹ [See References in Text note below.](#)

§432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited

No board of trade whose members are engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment in interstate commerce shall exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association, corporate or otherwise, composed substantially of producers of agricultural products, or any such representative of any organization acting for a group of such associations, if such association or organization has adequate financial responsibility and complies or agrees to comply with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a board of trade shall forbid or be construed to forbid the return on a patronage basis by such cooperative association or organization to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(Mar. 4, 1927, ch. 508, §2, 44 Stat. 1424.)

§433. Remedies of cooperative association excluded from representation

Any such cooperative association or any such organization whose duly authorized representative is excluded from such membership and privileges by any board of trade referred to in section 432 of this title may sue in the United States District Court in whose jurisdiction such board of trade is operated or maintained for a mandatory injunction compelling such board of trade to admit such duly authorized representative to such membership and privileges and for any damages sustained, and such court shall have jurisdiction to issue such an injunction and to award such incidental damages as it may deem appropriate.

(Mar. 4, 1927, ch. 508, §3, 44 Stat. 1424.)

CHAPTER 13—TEXTILE FOUNDATION

Sec.

- 501. Creation of body corporate; directors; principal office; agencies.
- 502. Board of directors of Textile Foundation.
- 503. Purpose of Foundation.
- 504. Powers of Foundation.
- 505. Report to Congress.
- 506. Amendment and repeal of chapter.

§501. Creation of body corporate; directors; principal office; agencies

The Secretary of Commerce, the Secretary of Agriculture, and three directors first appointed as provided in section 502 of this title and their successors, are created a body corporate of the District of Columbia by the name of the "Textile Foundation" (in this chapter referred to as the corporation). The incorporation shall be held effected upon the date of the first meeting of the board of directors. The corporation shall maintain its principal office in the District of Columbia and may establish such agencies or branch offices at such places as it deems advisable.

(June 10, 1930, ch. 440, §1, 46 Stat. 539.)

§502. Board of directors of Textile Foundation

(a) Composition

The board of directors of the corporation (in this chapter referred to as the board) shall be constituted as follows:

- (1) The Secretary of Commerce;

(2) The Secretary of Agriculture; and

(3) Three individuals, familiar with the textile industry or its allied branches, including that of production of raw materials, and their successors, to be appointed by the President, one for a term of two years, one for a term of three years, and one for a term of four years, from the date the incorporation is effected.

(b) Term of successor; vacancies

Each successor shall be appointed for a term of four years from the date of the expiration of the term of the member whom he succeeds, except that any successor appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed only for the unexpired term of the member whom he succeeds. A vacancy in the office of a director shall not impair the power of the remaining directors to execute the functions of the board. A majority of the directors shall constitute a quorum for the transaction of the business of the board.

(c) Compensation; reimbursement for expenses

The members of the board shall serve without compensation for their services as such members, but they shall be reimbursed from the corporation for actual expenses incurred by them while in the performance of the functions vested in the board by this chapter.

(d) Prohibitions against holding two or more offices inapplicable

Any officer or employee of the United States, or of any corporation acting as a governmental agent of the United States, may, in addition to his present office, hold the office of director of the Textile Foundation without regard to any provision of law prohibiting the holding of more than one office.

(e) Election of chairman

The board at its first meeting and at each annual meeting thereafter shall elect a chairman.

(f) Board to direct corporation

The board shall direct the exercise of all the powers of the corporation.

(June 10, 1930, ch. 440, §2, 46 Stat. 539.)

§503. Purpose of Foundation

(a) Scientific and economic research

The purposes of the corporation shall be to administer and expend its funds and other property for scientific and economic research for the benefit and development of the textile industry, its allied branches, and including that of production of raw materials.

(b) Payment by Textile Alliance, Incorporated

The Textile Alliance, Incorporated, is authorized to pay to the corporation the amounts payable in accordance with the arrangement between the Textile Alliance, Incorporated, and the Department of State, in lieu of paying such amounts into the United States Treasury; except that any amounts payable in accordance with such arrangement, and paid into the United States Treasury before June 10, 1930, are authorized to be appropriated to the credit of the corporation. Upon the receipt by the corporation of such amounts the liability of the Textile Alliance, Incorporated, under such arrangement shall be extinguished.

(June 10, 1930, ch. 440, §3, 46 Stat. 539.)

§504. Powers of Foundation

The corporation—

(a) Shall have perpetual succession;

(b) May sue and be sued;

- (c) May adopt a corporate seal and alter it at pleasure;
 - (d) May adopt and alter bylaws;
 - (e) May appoint officers and agents;
 - (f) May acquire by purchase, devise, bequest, gift, or otherwise, and hold, encumber, convey, or otherwise dispose of, such real and personal property as may be necessary or appropriate for its corporate purposes;
 - (g) May invest and reinvest the principal and interest of its funds; and
 - (h) Generally, may do any and all lawful acts necessary or appropriate to carry out the purposes for which the corporation is created.
- (June 10, 1930, ch. 440, §4, 46 Stat. 540.)

§505. Report to Congress

The corporation shall, on or before the 1st day of December in each year, transmit to Congress and to the President a report of its proceedings and activities for the preceding calendar year, including a detailed statement of its receipts and expenditures. Such reports shall not be printed as public documents.

(June 10, 1930, ch. 440, §5, 46 Stat. 540.)

§506. Amendment and repeal of chapter

The right to alter, amend, or repeal this chapter is expressly reserved.

(June 10, 1930, ch. 440, §6, 46 Stat. 540.)

CHAPTER 13A—FISHING INDUSTRY

Sec.

- 521. Fishing industry; associations authorized; "aquatic products" defined; marketing agencies; requirements.
- 522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court.

§521. Fishing industry; associations authorized; "aquatic products" defined; marketing agencies; requirements

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8

per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

(June 25, 1934, ch. 742, §1, 48 Stat. 1213.)

§522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court

If the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof.

(June 25, 1934, ch. 742, §2, 48 Stat. 1214; 1939 Reorg. Plan No. II, §4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Secretary of Commerce" substituted in text for "Secretary of the Interior" in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of

Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Secretary of Commerce under this section transferred to Secretary of the Interior by Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, Government Organization and Employees, which transferred Bureau of Fisheries from Department of Commerce to Department of the Interior.

CHAPTER 14—RECONSTRUCTION FINANCE CORPORATION

Sec.

601 to 619. Repealed, Omitted, or Transferred.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF ACT JULY 30, 1953, CH. 282, TITLE I

Act July 30, 1953, ch. 282, title I, §101, 67 Stat. 230, provided that: "This title [amending sections 603 and 604 of this title and section 459 of Title 40, Public Buildings, Property, and Works, enacting provisions set out as a note under this section, and amending provisions set out as notes under sections 98, 544, and 4534 of Title 50, War and National Defense, and sections 1929 and 2261 of the former Appendix to Title 50] may be cited as the 'Reconstruction Finance Corporation Liquidation Act'."

CONTINUATION OF PENDING PROCEEDINGS

Act July 30, 1953, ch. 282, title I, §105, 67 Stat. 231, as amended by act June 29, 1954, ch. 410, §2(c), 68 Stat. 320, provided that: "No suit, action, or other proceeding lawfully commenced by or against the Reconstruction Finance Corporation shall abate by reason of the dissolution of the Corporation; but the court may, on motion or supplemental petition filed at any time within twelve months after the date of such dissolution and showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the officer or agency of the Government performing the functions with respect to which any such suit, action, or other proceeding was commenced."

EXTENSION OR RENEWAL OF LOANS

Pub. L. 85-536, §4, July 18, 1958, 72 Stat. 396, provided that: "The Secretary of the Treasury is hereby authorized to further extend the maturity of or renew any loan transferred to the Secretary of the Treasury pursuant to Reorganization Plan Numbered 1 of 1957 [set out as a note above], for additional periods not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan."

EXECUTIVE DOCUMENTS

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Reconstruction Finance Corporation was abolished and remaining functions transferred to Housing and Home Finance Agency, Administrator of General Services, Administrator of Small Business Administration, and Secretary of Commerce, such transfer including assets and liabilities, administrative property, personnel, funds, and records, pursuant to 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in Appendix II of title 5, Government Organization and Employees. The Plan provided for retirement of capital stock and payment of all unused funds into the Treasury as miscellaneous receipts and required a final report by Secretary of Treasury not later than June 30, 1959. Powers of the Corporation relating to loans and advances were terminated at close of business on sixtieth day after July 30, 1953, through amendment of former section 604(f) of this title by act July 30, 1953, ch. 282, title I, §102(b), 67 Stat. 230. Consequential liquidation of assets, winding up of affairs, and dissolution of the Corporation and cancellation and retirement of its capital stock were required under former section 608 of this title. Former section 609 of this title required such liquidation, winding up of affairs, and dissolution by Secretary of Treasury where such action had been initiated but not completed by close of business on June 30, 1954.

REORGANIZATION PLAN NO. 1 OF 1957

EFF. JUNE 30, 1957, 22 F.R. 4633, 71 STAT. 647

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 29, 1957, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

ABOLITION OF THE RECONSTRUCTION FINANCE CORPORATION

SECTION 1. DEFINITIONS

As used in this reorganization plan:

(a) The term "Corporation" means the Reconstruction Finance Corporation.

(b) The term "remaining functions" means (1) all functions of the Corporation, (2) except as otherwise provided in subsections (b) and (c) of section 6 of this reorganization plan, all functions of the Secretary of the Treasury under section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609), and (3) all functions of the Secretary of the Treasury under sections 102 and 106(b) of the Reconstruction Finance Corporation Liquidation Act (67 Stat. 230, 231), as amended [section 603 and section 609 note of this title].

(c) The term "transferees" means the Housing and Home Finance Administrator, the Administrator of General Services, the Administrator of the Small Business Administration, and the Secretary of the Treasury.

SEC. 2. TRANSFER OF FUNCTIONS

(a) There are hereby transferred to the Housing and Home Finance Administrator the remaining functions with respect to or arising out of (1) the securities and obligations of, loans made to, and contracts or other agreements with, States, municipalities, political subdivisions thereof, public agencies, boards, commissions or other public bodies, and (2) loans, securities and obligations acquired in connection with programs of financial assistance for drainage and irrigation projects.

(b) There are hereby transferred to the Administrator of General Services the remaining functions with respect to or arising out of (1) the affairs of the Smaller War Plants Corporation which were transferred to the Corporation pursuant to Executive Order No. 9665 of December 27, 1945 (11 F.R. 3) and section 207 of Public Law 132—80th Congress 61 Stat. 209), (2) the national defense, war and reconversion activities with respect to which notes of the Corporation were cancelled pursuant to the provisions of Title II of Public Law 860—80th Congress (62 Stat. 1187), and (3) activities of the RFC Price Adjustment Board and the functions transferred to the Corporation by Executive Order No. 9841 of April 23, 1947 (12 F.R. 2645).

(c) Except as otherwise provided in sections 2(d)(1) and 2(d)(2) of this reorganization plan (relating to financial assistance to railroads, etc., and to Schedule A hereto annexed), there are hereby transferred to the Administrator of the Small Business Administration the remaining functions with respect to or arising out of programs of financial assistance to business enterprises and to victims of floods or other disasters.

(d) There are hereby transferred to the Secretary of the Treasury all functions of the Corporation not otherwise transferred by the provisions of this reorganization plan, including, but not limited to, all functions of the Corporation with respect to or arising out of (1) programs of financial assistance to railroad companies, financial institutions, and insurance companies, (2) the obligations and loans listed in Schedule A hereto annexed, and (3) the War Damage Corporation.

(e) The foregoing transfers include the transfer to each transferee, for use in executing his respective functions thereunder, of the powers, authority, rights, and immunities now vested in or available or applicable to the Corporation for carrying out the functions transferred to the transferee under this reorganization plan.

SEC. 3. TRANSFER OF ASSETS AND LIABILITIES

The loans, obligations, securities, capital stock, and other assets pertaining to the functions transferred by section 2 of this reorganization plan (including accrued interest thereon, and property acquired in connection therewith) and the liabilities, contracts, bonds, mortgages, notes and other instruments relating thereto are hereby transferred from the Corporation to the respective transferees: *Provided, however*, That all assets, liabilities, and commitments relating to the functions, transferred by section 2 (a) of this reorganization plan are hereby transferred to the Revolving Fund (Liquidating Programs) established by the Independent Offices Appropriation Act, 1955 (68 Stat. 295) [12 U.S.C. 1701g–5].

SEC. 4. ADMINISTRATIVE PROPERTY, PERSONNEL, FUNDS AND RECORDS

In addition to the transfers made by the provisions of section 3 of this reorganization plan, there shall be transferred to the Housing and Home Finance Agency, General Services Administration, Small Business

Administration, and Treasury Department so much as the Director of the Bureau of the Budget shall determine to be appropriate by reason of transfers made by sections 2 and 3 of this reorganization plan of the administrative property, personnel, records, liabilities and commitments of the Corporation or of the Office of Production and Defense Lending in the Department of the Treasury and of the authorizations, allocations, and funds available or to be made available with respect to the transferred functions (including, but in no way limiting the generality of the foregoing, the authority to issue notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 606), and the duty of making payments on such notes or obligations issued by or transferred to the respective transferee hereunder). In allocating the administrative expense funds applicable to the functions transferred by the provisions of this reorganization plan and said Director shall allocate and transfer to the General Services Administration as a payment on behalf of the Housing and Home Finance Agency, General Services Administration, Small Business Administration and Treasury Department such sum for rent of building space for the carrying out of the transferred functions during the fiscal year ending June 30, 1958, as the said Director shall determine. Such further measures and disposition as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner and by such agencies as the Director shall direct.

SEC. 5. DELEGATION OF AUTHORITY

Each transferee may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, agency, or administrative unit under his jurisdiction of any function transferred to him by the provisions of this reorganization plan.

SEC. 6. ABOLITION OF THE CORPORATION

(a) The Corporation is hereby abolished.

(b) The Secretary of the Treasury shall retire the capital stock of the Corporation and, subject to the provisions of section 4 hereof, shall pay into the Treasury, as miscellaneous receipts, all unused funds of the Corporation.

(c) Not later than June 30, 1959, the Secretary of the Treasury shall transmit a report to the Congress, which report (1) shall cover the affairs of the Corporation up to the time of the taking effect of the provisions of this reorganization plan, and (2) shall correspond to the final report required by section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609). The function of making the final report provided for in the said section 10 is hereby abolished.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect at the time determined under the provisions of section 6(a) of the Reorganization Act of 1949, as amended [see 5 U.S.C. 906(a)] or at the close of June 30, 1957, whichever is later.

SCHEDULE A

This schedule annexed to Reorganization Plan No. 1 of 1957 lists by name and address of the obligor or borrower the obligations and loans referred to in clause (2) of section 2(d) of such reorganization plan:

<i>Name of obligor or borrower</i>	<i>Address</i>
Alaska Plywood Corp	Juneau, Alaska.
Alford Refrigerated Warehouse	Dallas, Tex.
Braun Bros. Packing Co	Troy, Ohio.
Chromcraft Corp	St. Louis, Mo.
Civic Hotel Corp	Odessa, Tex.
Deep Water Terminals, Inc	Brooklyn, N.Y.
Detroit Steel Corp	Detroit, Mich.
Hal Roach Studios, Inc	Culver City, Calif.
Hayward Woolen Co	Whitinsville, Mass.
The Horle Arms Co	Deep River, Conn.
Jack Tar of Arkansas, Inc	Hot Springs, Ark.

Landers Packing Co	Denver, Colo.
Langley Corp	San Diego, Calif.
Lawton Community Hotel	Lawton, Okla.
Lone Star Steel Co	Dallas, Tex.
Louisville Builders Supply Co	Louisville, Ky.
Lustron Corp	Columbus, Ohio.
Mayfair Extension, Inc	Washington, D.C.
New Haven Clock & Watch Co	New Haven, Conn.
Oregon Fibre Products, Inc	Pilot Rock, Oreg.
The Prudence Co., Inc	New York, N.Y.
Seidelhuber Steel Rolling Mills	Seattle, Wash.
South Water Building Corp	Rockford, Ill.
South Water Machinery Corp	Do.
Texas Consolidated Oils	Dallas, Tex.
Texas Frozen Foods Corp	Harlingen, Tex.
Waltham Watch Co	Waltham, Mass.
Wheland Co	Chattanooga, Tenn.

§§601 to 616. Repealed or Omitted

EDITORIAL NOTES

CODIFICATION

Section 601, acts Jan. 22, 1932, ch. 8, §1, 47 Stat. 5; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202; May 25, 1948, ch. 334, §1, 62 Stat. 261; 1951 Reorg. Plan No. 1, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774, created the Reconstruction Finance Corporation, which was abolished by section 6 of Reorg. Plan. No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Sections 601a, 601b, acts Jan. 20, 1934, ch. 3, §1, 48 Stat. 318; Jan. 31, 1935, ch. 2, §1, 49 Stat. 1, which extended the life of the Corporation until Feb. 1, 1935, and Feb. 1, 1937, respectively, were repealed by act of June 30, 1947, ch. 166, title II, §206(i), (m), 61 Stat. 208.

Section 602, acts Jan. 22, 1932, ch. 8, §2, formerly §3, 47 Stat. 5; July 21, 1932, ch. 520, §205(b), 47 Stat. 714; July 22, 1932, ch. 522, §6(f), 47 Stat. 728; June 25, 1940, ch. 427, §2, 54 Stat. 572; renumbered and amended June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, §2, 62 Stat. 262; Oct. 15, 1949, ch. 695, §§4, 5(a), 63 Stat. 880, related to the appointment, qualifications and tenure of directors of the Reconstruction Finance Corporation. It was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 648, 654, 655.

Section 603, acts Jan. 22, 1932, ch. 8, §3, formerly §4, 47 Stat. 5; July 21, 1932, ch. 520, §208(a), 47 Stat. 714; Feb. 24, 1938, ch. 32, §4, 52 Stat. 80; renumbered and amended June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, §3, 62 Stat. 262; July 30, 1953, ch. 282, title I, §102(a), 67 Stat. 230; June 29, 1954, ch. 410, §2(b), 68 Stat. 320, provided for the powers of the Reconstruction Finance Corporation, including appointment and pay of employees. It was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 648, 654, 655.

Section 603a, act Jan. 31, 1935, ch. 2, §1, 49 Stat. 1, related to salaries of officers and employees. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 603b, act June 30, 1949, ch. 286, title III, §301, 63 Stat. 375, provided for distribution of administrative expenses to the accounts of the Corporation in accordance with generally recognized accounting practices, which Corporation was abolished by section 6 of Reorg. Plan. No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 603c, acts June 30, 1949, ch. 286, title III, §301, 63 Stat. 375; June 30, 1949, ch. 288, title I, §105, 63 Stat. 381, proscribed the use of funds of the Corporation for surplus property or for benefit of other agencies, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22

F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 604, acts Jan. 22, 1932, ch. 8, §4, formerly §5, 47 Stat. 6; June 19, 1934, ch. 653, §6(b), 48 Stat. 1109; June 25, 1940, ch. 427, §6(b), 54 Stat. 574; Aug. 7, 1946, ch. 811, §1(a), 60 Stat. 901; renumbered and amended June 30, 1947, ch. 166, title I, §1, 61 Stat. 203; May 25, 1948, ch. 334, §4, 62 Stat. 263; June 29, 1948, ch. 723, 62 Stat. 1101; July 1, 1948, ch. 784, §§3, 4, 62 Stat. 1209; July 19, 1949, ch. 351, §2, 63 Stat. 446; Oct. 25, 1949, ch. 729, §4, 63 Stat. 906; April 20, 1950, ch. 94, title V, §506, 64 Stat. 81; Oct. 24, 1951, ch. 555, §101, 65 Stat. 616; Reorg. Plan No. 1 of 1951, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774; July 30, 1953, ch. 282, title I, §102(b), 67 Stat. 230, related to loans and advances by the Corporation. It was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 648, 654.

Section 604a, act Jan. 20, 1934, ch. 3, §2, 48 Stat. 319, related to time limitation in disbursement of funds committed by the Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(i), 61 Stat. 208.

Section 604b, act Jan. 31, 1935, ch. 2, §2, 49 Stat. 2, related to limitation on disbursement of funds under commitment. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208, as amended May 27, 1948, ch. 334, §6, 62 Stat. 265.

Section 605, acts Jan. 22, 1932, ch. 8, §5, formerly §6, 47 Stat. 8; May 20, 1933, ch. 35, §2, 48 Stat. 73; June 19, 1934, ch. 653, §2, 48 Stat. 1107; June 25, 1940, ch. 427, §3(a), 54 Stat. 573; Sept. 18, 1940, ch. 722, title III, §331(a), (b), 54 Stat. 955; renumbered and amended June 30, 1947, ch. 166, title I, §1, title II, §206(a), (e), 61 Stat. 202, 208, authorized and directed the Federal Reserve banks to act as custodians and fiscal agents for the Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605a, act July 21, 1932, ch. 520, §1, 47 Stat. 709, related to loans to States and municipalities for unemployment relief purposes. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 605b, acts July 21, 1932, ch. 520, §201, 47 Stat. 711; Mar. 23, 1933, ch. 5, 48 Stat. 20; Ex. Ord. No. 6084, May 27, 1933; May 29, 1933, ch. 42, title I, 48 Stat. 99; June 10, 1933, ch. 55, §§5-9, 48 Stat. 120, 121; June 16, 1933, ch. 98, §80, 48 Stat. 273; June 16, 1933, ch. 100, §5, 48 Stat. 283, authorized loans to States, municipalities, etc., for self-liquidating projects. Subsecs. (a) to (d) and (f) to (j) were repealed by act June 30, 1947, ch. 166, title II, §206(a), (e), 61 Stat. 208.

Subsec. (e) related to the creation of regional agricultural credit corporations by the Reconstruction Finance Corporation, which was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605c, act July 21, 1932, ch. 520, §206, 47 Stat. 714, authorized loans to borrowers organized under laws of Alaska, District of Columbia, Hawaii and Puerto Rico. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 605d, act July 21, 1932, ch. 520, §207, 47 Stat. 715, prohibited loans to financial institutions whose officers or directors are also directors of Reconstruction Finance Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 605e, acts June 10, 1933, ch. 55, §1, 48 Stat. 119; Jan. 31, 1935, ch. 2, §8, 49 Stat. 4, related to purchase of preferred stock of insurance companies. It was repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Sections 605f, 605g, acts June 10, 1933, ch. 55, §§2, 3, 48 Stat. 120; June 19, 1934, ch. 653, §12(a), 48 Stat. 1111, which related to loans or purchases of capital notes of insurance companies, and the financial showing necessary for the purchase of stock or making of loans, were repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Section 605h, act June 10, 1933, ch. 55, §4, 48 Stat. 120, prohibited the making of loans to applicants whose officers or employees were receiving unreasonable compensation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Sections 605i, acts June 10, 1933, ch. 55, §11, 48 Stat. 121; June 19, 1934, ch. 653, §12(b), 48 Stat. 1112, defined insurance company and State.

Section 605j, act June 10, 1933, ch. 55, §14, 48 Stat. 122, reserved right to amend or repeal former sections 605e to 605i of this title and provided for separability of their provisions. It was repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Section 605k, acts Apr. 13, 1934, ch. 121, 48 Stat. 589; July 26, 1935, ch. 421, 49 Stat. 505; Apr. 17, 1936, ch. 234, §1, 49 Stat. 1232, authorized the Reconstruction Finance Corporation to make loans for repair of damage caused by floods and other catastrophes, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 646. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605k-1, acts Feb. 11, 1937, ch. 10, 50 Stat. 19; May 28, 1937, ch. 275, 50 Stat. 211; Mar. 3, 1938,

ch. 40, 52 Stat. 84; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 10, 1941, ch. 190, §1, 55 Stat. 248, related to the creation and powers of the Disaster Loan Corporation and was rendered obsolete by Joint Res. June 30, 1945, ch. 215, §1, 59 Stat. 310, which dissolved the Corporation and transferred all powers, functions, duties, liabilities, etc., to the Reconstruction Finance Corporation. Section 2 of Joint Res. June 30, 1945, saved all pending court or other proceedings and provided that the Court could, upon motion filed within one year after July 1, 1945, substitute the Reconstruction Finance Corporation for the Disaster Loan Corporation. Section 3 of Joint Res. June 30, 1945, provided that it should become effective July 1, 1945. It was repealed by act of June 30, 1947, ch. 166, title II, §206(r), 61 Stat. 209.

Section 605l, act Jan. 31, 1935, ch. 2, §11, 49 Stat. 5, related to substitution of bonds or other evidence of indebtedness held by the Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 605m, acts Jan. 31, 1935, ch. 2, §3, 49 Stat. 2; June 25, 1940, ch. 427, §3(b), 54 Stat. 573; Sept. 18, 1940, ch. 722, title III, §331(c), 54 Stat. 956, related to maturity of loans made by the Corporation generally and to railroads in particular. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208, as amended May 25, 1948, ch. 334, §6, 62 Stat. 265.

Section 606, acts Jan. 22, 1932, ch. 8, §7, 47 Stat. 8; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, authorized the Reconstruction Finance Corporation to issue notes, bonds, etc., which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. A prior section 606, act Jan. 22, 1932, ch. 8, §5a, 47 Stat. 8, was omitted in the general revision of act Jan. 22, 1932, by act June 30, 1947, ch. 166. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 606a, act Jan. 22, 1932, ch. 8, §5e, as added June 16, 1934, ch. 546, §3, 48 Stat. 971; Jan. 31, 1935, ch. 2, §6, 49 Stat. 3, which related to loans on or purchase of assets of closed financial institutions, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606b, act Jan. 22, 1932, ch. 8, §5d, as added June 19, 1934, ch. 653, §5, 48 Stat. 1108; amended Jan. 31, 1935, ch. 2, §10, 49 Stat. 4; Apr. 13, 1938, ch. 140, 52 Stat. 212; June 25, 1940, ch. 427, §§5, 6(c), 54 Stat. 573, 574; Sept. 26, 1940, ch. 734, §1, 54 Stat. 961; June 10, 1941, ch. 190, §4, 55 Stat. 249; June 11, 1942, ch. 404, §9, 56 Stat. 355, which provided for loans to States, municipalities, public agencies, and business enterprises, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5. Act June 30, 1947, ch. 166, title II, §206(x), (z), 61 Stat. 209, repealed acts Mar. 27, 1942, ch. 198, §1, 56 Stat. 174; Aug. 7, 1946, ch. 811, §1, 60 Stat. 901 formerly cited to section 606b of this title.

Section 606b-1, act Jan. 22, 1932, ch. 8, §5f, as added Mar. 27, 1942, ch. 198, §2, 56 Stat. 175, related to transfer of real estate to Corporation by Government agencies. It was repealed by act of June 30, 1947, ch. 166, title II, §206(x), 61 Stat. 209.

Section 606b-2, act Jan. 22, 1932, ch. 8, §5g, as added Mar. 27, 1942, ch. 198, §2, 56 Stat. 175, related to funds for War Damage Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(x), 61 Stat. 209.

Section 606b-3, act Jan. 22, 1932, ch. 8, §5h, as added May 11, 1942, ch. 301, 56 Stat. 275, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606b-4, act Aug. 7, 1946, ch. 811, §2, 60 Stat. 902, related to purchase of servicemen's guaranteed or insured readjustment loans. It was repealed by act of June 30, 1947, ch. 166, title II, §206(z), 61 Stat. 209.

Section 606b-5, act Aug. 7, 1946, ch. 811, §3, 60 Stat. 902, authorized extension of credit by Reconstruction Finance Corporation to Republic of the Philippines, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 606c, act June 19, 1934, ch. 653, §13, 48 Stat. 1112, related to loans for organizing farmers' mineral rights pools. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606d, acts June 19, 1934, ch. 653, §14, 48 Stat. 1112; Jan. 31, 1935, ch. 2, §12, 49 Stat. 5; Sept. 16, 1940, ch. 721, 54 Stat. 897, related to loans to aid mining, milling and smelting industry. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606e, act June 19, 1934, ch. 653, §15, 48 Stat. 1112, related to loans to aid fishing industry. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606f, act June 19, 1934, ch. 653, §16, 48 Stat. 1113, related to loans for payment of teachers' salaries due prior to June 1, 1934. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606g, act Jan. 22, 1932, ch. 8, §5b, as added June 19, 1934, ch. 653, §8, 48 Stat. 1109, was omitted

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

Section 606h, act June 19, 1934, ch. 653, §10, 48 Stat. 1110, related to adjustment of maturities of obligations of borrowers. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606i, act Jan. 22, 1932, ch. 8, §5c, as added Jan. 31, 1935, ch. 2, §5, 49 Stat. 3, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606j, act Aug. 24, 1935, ch. 646, §1, 49 Stat. 796, related to loans to public school districts and authorities. It was repealed by act of June 30, 1947, ch. 166, title II, §206(n), (u), 61 Stat. 208, 209.

Section 606k, act Aug. 24, 1935, ch. 646, §2, 49 Stat. 798, related to limitation of loans authorized by former section 606j of this title. It was repealed by act of June 30, 1947, ch. 166, title II, §206(n), (u), 61 Stat. 208, 209.

Section 606l, act Sept. 5, 1940, ch. 715, §12, 54 Stat. 871, related to financing acquisition of right-of-way for Federal aid roads. It was repealed by act of June 30, 1947, ch. 166, title II, §206(n), (u), 61 Stat. 208, 209.

Section 607, acts Jan. 22, 1932, ch. 8, §8, 47 Stat. 8; July 21, 1932, ch. 520, §204, 47 Stat. 714; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, §5, 62 Stat. 265, exempted the Reconstruction Finance Corporation from all federal and local taxation except on real property, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 607a, act Jan. 31, 1935, ch. 2, §13, 49 Stat. 5, related to use of receipts from sale of securities. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 608, acts Jan. 22, 1932, ch. 8, §9, 47 Stat. 9; July 21, 1932, ch. 520, §204, 47 Stat. 714; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; 1951 Reorg. Plan No. 1, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774, provided for the possible premature liquidation of the Reconstruction Finance Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 609, acts Jan. 22, 1932, ch. 8, §10, 47 Stat. 9; July 21, 1932, ch. 520, §209, 47 Stat. 715; June 10, 1941, ch. 190, §3, 55 Stat. 248; June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; 1951 Reorg. Plan No. 1, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774; June 29, 1954, ch. 410, §2(a), 68 Stat. 320, transferred from the Administrator to the Secretary of the Treasury the duty of completing the liquidation of the Reconstruction Finance Corporation after June 30, 1954, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 609a, act July 21, 1932, ch. 520, §205(a), 47 Stat. 714, increased the amount of obligations the Corporation could have outstanding, to six and three-fifths times its capital stock. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 609a-1, act June 22, 1946, ch. 445, §1, 60 Stat. 294, was from the Department of Agriculture Appropriation Act, 1947, and increased by \$50,000,000 the amount of obligations the Corporation could issue or have outstanding.

Section 609b, act June 16, 1933, ch. 90, title III, §302, 48 Stat. 210, decreased by \$400,000,000 the amount of obligations the Corporation could have outstanding. It was repealed by act of June 30, 1947, ch. 166, title II, §206(c), 61 Stat. 208.

Section 609b-1, formerly 609bb, act Jan. 20, 1934, ch. 3, §3, 48 Stat. 319, increased by \$850,000,000 the amount of obligations the Corporation could have outstanding. It was repealed by act of June 30, 1947, ch. 166, title II, §206(g), 61 Stat. 208.

Section 609c, act May 12, 1933, ch. 25, title II, §38, 48 Stat. 50, increased by \$300,000,000 the amount of obligations the Corporation could have outstanding, to provide funds for agricultural credits. It was repealed by act of June 30, 1947, ch. 166, title II, §206(c), 61 Stat. 208.

Section 609c-1, act May 12, 1933, ch. 30, §2(b), 48 Stat. 56, increased by \$500,000,000 the Corporation's authority to issue notes, debentures, etc.

Section 609d, act June 19, 1934, ch. 648, title II, §1, 48 Stat. 1056; Reorg. Plan No. 1 of 1939, §§301, 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, increased by \$250,000,000 the amount of obligations the Corporation could have outstanding, to purchase securities from the Public Works Administration. It was repealed by act of June 30, 1947, ch. 166, title II, §206(j), 61 Stat. 208.

Section 609e, act June 29, 1937, 11 p.m., ch. 401, §202, 50 Stat. 357; Reorg. Plan No. I of 1939, §§301, 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, increased to \$400,000,000 the amount the

Corporation could invest in securities purchased from the Public Works Administration. It was repealed by act of June 30, 1947, ch. 166, title II, §206(j), 61 Stat. 208.

Section 609f, act Feb. 24, 1938, ch. 32, §2, 52 Stat. 80, reduced the amount of outstanding obligations authorized under former section 611a of this title, by the amount of notes authorized to be cancelled pursuant to section. Section was not enacted as a part of the Reconstruction Finance Corporation Act which comprises this chapter.

Section 609g, act June 25, 1940, ch. 421, §1, 54 Stat. 565, authorized an additional \$50,000,000.

Section 609h, act June 25, 1940, ch. 421, §1, 54 Stat. 567, authorized an additional \$100,000,000.

Section 609i, act June 26, 1940, ch. 432, §2(c), 54 Stat. 614, authorized Corporation to advance to Secretary of Agriculture upon his request an amount not to exceed \$125,000,000.

Section 609j, act Jan. 22, 1932, ch. 8, §5d, as added June 19, 1934, ch. 653, §5, 48 Stat. 1108; amended Sept. 26, 1940, ch. 734, §2, 54 Stat. 962, authorized an additional \$1,500,000,000, and was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 609k, act June 27, 1934, ch. 847, title VI, §602, as added Mar. 28, 1941, ch. 31, 55 Stat. 55, authorized an additional amount of \$10,000,000 to be used for the Defense Housing Insurance Fund. It was repealed by act of June 30, 1947, ch. 166, title II, §206(l), 61 Stat. 208.

Sections 609l, 609m, and 609n, act July 1, 1941, ch. 267, §1, 55 Stat. 439, 440, 442, authorized an additional \$270,000,000.

Section 609o, act June 10, 1941, ch. 190, §5, 55 Stat. 250, authorized an additional \$1,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(v), 61 Stat. 209.

Section 609p, act Oct. 23, 1941, ch. 454, 55 Stat. 744, authorized an additional \$1,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(w), 61 Stat. 209.

Section 609q, act Mar. 27, 1942, ch. 198, §3, 56 Stat. 176, authorized an additional \$2,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(x), 61 Stat. 209.

Section 609r, act June 5, 1942, ch. 352, 56 Stat. 326, authorized an additional \$5,000,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(y), 61 Stat. 209.

Sections 609s to 609u, act July 22, 1942, ch. 516, 56 Stat. 695, 697, 698, authorized an additional \$140,000,000.

Section 609v, acts July 12, 1943, ch. 215, 57 Stat. 426; June 28, 1944, ch. 296, 58 Stat. 456; May 5, 1945, ch. 109, 59 Stat. 160, authorized an indefinite amount to carry out certain provisions of section.

Section 609w, acts July 12, 1943, ch. 215, 57 Stat. 428; June 28, 1944, ch. 296, 58 Stat. 457, authorized an additional \$15,000,000.

Section 609x, act June 28, 1944, ch. 296, 58 Stat. 458, authorized an additional \$25,000,000.

Section 609y, act May 5, 1945, ch. 109, 59 Stat. 162, authorized an additional \$50,000,000.

Section 609z, act June 22, 1946, ch. 445, 60 Stat. 293, authorized an additional \$70,000,000.

Section 610, acts Jan. 22, 1932, ch. 8, §11, 47 Stat. 10; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, relating to penalties for false statements, etc., is now covered by sections 493, 657, 709, 1006, 1014, and 1904 of Title 18, Crimes and Criminal Procedure. It was repealed by act of May 24, 1949, ch. 139, §142, 63 Stat. 109, and Sept. 6, 1966, Pub. L. 89-554, §8(a), 80 Stat. 654.

Section 611, acts Jan. 22, 1932, ch. 8, §12, 47 Stat. 10; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, authorized the Reconstruction Finance Corporation to exercise functions, powers, etc., of certain dissolved corporations, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611a, act Feb. 24, 1938, ch. 32, §1, 52 Stat. 79, provided for the cancellation of notes of the Reconstruction Finance Corporation by the Secretary of the Treasury, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611a-1, act Jan. 31, 1942, ch. 30, 56 Stat. 40, related to the disposition by the Secretary of the Treasury of county, municipal, and other securities transferred from the Reconstruction Finance Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611b, act Feb. 24, 1938, ch. 32, §3, 52 Stat. 80, related to the transfer of repayments or recoveries to the general fund of the Treasury.

Section 612, act Jan. 22, 1932, ch. 8, §12, 47 Stat. 10, authorized the Corporation to be a depository of public moneys, and was not covered in act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 613, act Jan. 22, 1932, ch. 8, §13, 47 Stat. 10, provided for the liquidation of the Corporation by the

directors, and was covered by section 9 of act Jan. 22, 1932, as amended by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, and set out as section 608 of this title.

Sections 613a, 613b, acts Jan. 20, 1934, ch. 3, §1, 48 Stat. 318; Jan. 31, 1935, ch. 2, §1, 49 Stat. 1 which, extended the time for liquidation of the Corporation pursuant to former section 613 of this title, were repealed by act of June 30, 1947, ch. 166, title II, §206(i), (m), 61 Stat. 208.

Section 613c, acts Jan. 26, 1937, ch. 6, §1, 50 Stat. 5; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 25, 1940, ch. 427, §6(a), 54 Stat. 574, further extended the time for liquidation of the Corporation and provided for suspension of lending authority by districts. Act Aug. 7, 1946, ch. 811, §1, 60 Stat. 901, which also amended act Jan. 26, 1937, was repealed by act June 30, 1947, ch. 166, title II, §206(q), (z), 61 Stat. 209.

Section 614, acts Jan. 22, 1932, ch. 8, §14, 47 Stat. 10; June 25, 1940, ch. 427, §6(b), 54 Stat. 574, relating to completion of liquidation of the Corporation by Secretary of Treasury, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5. Act Aug. 7, 1946, ch. 811, §1, 60 Stat. 901, which also amended section 14 of act Jan. 22, 1932, was repealed by section 206(z) of act June 30, 1947.

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

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

§616a. Transferred

EDITORIAL NOTES

CODIFICATION

Section 616a, acts Mar. 26, 1934, ch. 90, 48 Stat. 500; June 29, 1936, ch. 858, title II, §204, 49 Stat. 1987, which related to the shipment of exports financed by the Government in United States vessels, was transferred to section 1241–1 of Title 46, Appendix, Shipping, and was subsequently repealed and restated as section 55304 of Title 46, Shipping, by Pub. L. 109–304, §§8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710.

§§617 to 619. Repealed or Omitted

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

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

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

CHAPTER 14A—AID TO SMALL BUSINESS

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§631. Declaration of policy

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

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

(b) Assistance to compete in international markets

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

- (A) enhancing their ability to export;
- (B) facilitating technology transfers;
- (C) enhancing their ability to compete effectively and efficiently against imports;
- (D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;
- (E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and
- (F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

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

(c) Aid for agriculturally related industries; financial assistance

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

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

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

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

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

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

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

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

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

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

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

- (i) foster business ownership and development by individuals in groups that own and control little productive capital; and
- (ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

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

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

(f) Findings; purpose

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

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

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

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

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

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

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

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

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

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

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

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

(g) Assistance to disaster victims under disaster loan program

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

(h) Assistance to women owned business

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

that—

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

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

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

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

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

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

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

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

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

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

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

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

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

None of the funds made available pursuant to this chapter may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

(j) Contract bundling

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

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

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

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

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

Pub. L. 103–403, title VI, §609, Oct. 22, 1994, 108 Stat. 4204; Pub. L. 105–135, title IV, §411, Dec. 2, 1997, 111 Stat. 2617; Pub. L. 111–240, title I, §1203(d), Sept. 27, 2010, 124 Stat. 2522.)

EDITORIAL NOTES

CODIFICATION

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

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–240, in introductory provisions, inserted "the Administrator of" before "the Small Business Administration" and "through the Associate Administrator for International Trade, and" before "in cooperation with".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-135, §3, Dec. 2, 1997, 111 Stat. 2593, provided that: "This Act [see Short Title of 1997 Amendment note below] and the amendments made by this Act shall take effect on October 1, 1997."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-37, §32, June 15, 1989, 103 Stat. 77, provided that: "The amendments made by this Act [see Short Title of 1989 Amendment note below] shall apply as if included in the Business Opportunity Development Reform Act of 1988 [Pub. L. 100-656]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-656, title VIII, §803, Nov. 15, 1988, 102 Stat. 3899, as amended by Pub. L. 101-37, §31, June 15, 1989, 103 Stat. 76, provided that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

section 301(b) of this Act)."

Pub. L. 100–590, title I, §137, Nov. 3, 1988, 102 Stat. 3007, provided that: "This title [enacting sections 687m and 697c of this title, amending this section and sections 631b, 632, 633, 634, 636, 637, 638, 644, 648, 681, 687, and 695 to 697b of this title, repealing section 694 of this title, enacting provisions set out as notes under this section and sections 636, 637, 639, 644, 694, and 697 of this title, and amending provisions set out as notes under this section and section 637 of this title] shall be effective on the date of enactment [Nov. 3, 1988], except that sections 118 through 122 [amending this section and sections 632 and 636 of this title] shall be effective for all loan applications resulting from disaster declarations made on or after August 1, 1988, or from disaster declarations whose filing periods were open on October 1, 1988. Any new credit authority provided for in this Act [see Short Title of 1988 Amendment note below] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts."

Pub. L. 100–418, title VIII, §8014, Aug. 23, 1988, 102 Stat. 1563, provided that: "This title [amending this section and sections 636, 648, 649, and 696 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 638 of this title] shall become effective on the date of its enactment [Aug. 23, 1988]."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XIX, §1918, Aug. 13, 1981, 95 Stat. 781, provided that: "Sections 1908, 1909, and 1913 of this title [amending sections 633, 636, and 696 of this title] shall be effective October 1, 1981, and section 1910 of this title [amending section 636 of this title] shall be effective as provided therein [Oct. 1, 1985]. All other provisions of this title [amending sections 632, 633, 636, and 639 of this title, repealing section 636a of this title, enacting provisions set out as notes under this section and section 636 of this title, and amending provisions set out as notes under this section] shall be effective immediately [Aug. 13, 1981] but shall not affect any financing made, obligated, or committed under the Small Business Act [this chapter] or the Small Business Investment Act of 1958 [chapter 14B of this title] prior to the effective date hereof."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–302, title V, §507, July 2, 1980, 94 Stat. 854, provided that: "This Act [enacting sections 631a, 631b, 648, and 697 of this title, amending this section, sections 632, 633, 634, 634d, 636, 637, 644, 647, 694–2, 694b, and 694c of this title, section 5315 of Title 5, Government Organization and Employees, and sections 1961 and 1964 of Title 7, Agriculture, enacting provisions set out as notes under this section and sections 636, 637, and 648 of this title, and amending provisions set out as a note under this section] shall take effect October 1, 1980."

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–319, §1, Dec. 27, 2022, 136 Stat. 4424, provided that: "This Act [amending section 648 of this title and enacting provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Cyber Training Act of 2022'."

Pub. L. 117–259, §1, Dec. 21, 2022, 136 Stat. 2387, provided that: "This Act [amending section 639 of this title] may be cited as the 'SBA Cyber Awareness Act'."

Pub. L. 117–249, §1, Dec. 20, 2022, 136 Stat. 2350, provided that: "This Act [amending section 636 of this title and enacting provisions set out as a note under section 636 of this title] may be cited as the 'Disaster Assistance for Rural Communities Act'."

Pub. L. 117–188, §1, Oct. 10, 2022, 136 Stat. 2203, provided that: "This Act [amending section 657 of this title] may be cited as the 'One Stop Shop for Small Business Compliance Act of 2021'."

Pub. L. 117–183, §1, Sept. 30, 2022, 136 Stat. 2180, provided that: "This Act [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'SBIR and STTR Extension Act of 2022'."

Pub. L. 117–166, §1, Aug. 5, 2022, 136 Stat. 1365, provided that: "This Act [amending section 636 of this title] may be cited as the 'PPP and Bank Fraud Enforcement Harmonization Act of 2022'."

SHORT TITLE OF 2021 AMENDMENT

Pub. L. 117–6, §1, Mar. 30, 2021, 135 Stat. 250, provided that: "This Act [amending section 636 of this title and enacting provisions set out as a note under section 636 of this title] may be cited as the 'PPP Extension Act of 2021'."

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–142, §1, June 5, 2020, 134 Stat. 641, provided that: "This Act [amending sections 636 and 9005 of this title, enacting provisions set out as notes under section 636 of this title and section 3111 of Title

26, Internal Revenue Code, and amending provisions set out as a note under section 3111 of Title 26] may be cited as the 'Paycheck Protection Program Flexibility Act of 2020'."

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 116–70, §1, Nov. 22, 2019, 133 Stat. 1145, provided that: "This Act [amending provisions set out as a note under section 636 of this title] may be cited as the 'Rebuilding Small Businesses After Disasters Act'."

Pub. L. 115–416, §1, Jan. 3, 2019, 132 Stat. 5436, provided that: "This Act [amending section 657b of this title] may be cited as the 'Veterans Small Business Enhancement Act of 2018'."

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–370, §1, Dec. 21, 2018, 132 Stat. 5105, provided that: "This Act [amending section 636 of this title] may be cited as the '7(a) Real Estate Appraisal Harmonization Act'."

Pub. L. 115–324, §1, Dec. 17, 2018, 132 Stat. 4444, provided that: "This Act [amending section 632 of this title] may be cited as the 'Small Business Runway Extension Act of 2018'."

Pub. L. 115–259, §1, Oct. 9, 2018, 132 Stat. 3664, provided that: "This Act [enacting section 648c of this title, amending section 648 of this title, and enacting provisions set out as notes under section 648c of this title] may be cited as the 'Small Business Innovation Protection Act of 2017'."

Pub. L. 115–189, §1, June 21, 2018, 132 Stat. 1492, provided that: "This Act [enacting sections 657t and 657u of this title, amending sections 632, 636, 639, 647, and 657t of this title, enacting provisions set out as notes under sections 657t and 657u of this title, and amending provisions set out as notes under this section] may be cited as the 'Small Business 7(a) Lending Oversight Reform Act of 2018'."

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114–125, title V, §501, Feb. 24, 2016, 130 Stat. 172, provided that: "This title [enacting sections 4721a and 4728a of this title, amending sections 634c, 649, and 4727 of this title, and enacting provisions set out as a note under section 4727 of this title] may be cited as the 'Small Business Trade Enhancement Act of 2015' or the 'State Trade Coordination Act'."

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–88, §1(a), Nov. 25, 2015, 129 Stat. 686, provided that: "This Act [amending sections 636, 644, 648, 657d, and 657j of this title and enacting provisions set out as notes under this section and sections 636 and 657l of this title] may be cited as the 'Recovery Improvements for Small Entities After Disaster Act of 2015' or the 'RISE After Disaster Act of 2015'." [For identical short title, see below.]

Pub. L. 114–88, div. A, §1001, Nov. 25, 2015, 129 Stat. 687, provided that: "This division [amending section 636 of this title and enacting provisions set out as notes under sections 636 and 657l of this title] may be cited as the 'Superstorm Sandy Relief and Disaster Loan Program Improvement Act of 2015'."

Pub. L. 114–88, div. B, §2001, Nov. 25, 2015, 129 Stat. 689, provided that: "This division [amending sections 636, 644, 648, 657d, and 657j of this title and enacting provisions set out as a note under section 636 of this title] may be cited as the 'Recovery Improvements for Small Entities After Disaster Act of 2015' or the 'RISE After Disaster Act of 2015'." [For identical short title, see above.]

Pub. L. 114–38, §1, July 28, 2015, 129 Stat. 437, provided that: "This Act [amending section 636 of this title] may be cited as the 'Veterans Entrepreneurship Act of 2015'."

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112–81, div. E, title L, §5001, Dec. 31, 2011, 125 Stat. 1822, provided that: "This division [enacting sections 638a and 638b of this title, amending sections 632 and 638 of this title, enacting provisions set out as notes under sections 638 and 638b of this title, and amending provisions set out as a note under section 638 of this title] may be cited as the 'SBIR/STTR Reauthorization Act of 2011'."

Pub. L. 112–17, §1, June 1, 2011, 125 Stat. 221, provided that: "This Act [amending section 638 of this title] may be cited as the 'Small Business Additional Temporary Extension Act of 2011'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–240, §1, Sept. 27, 2010, 124 Stat. 2504, provided that: "This Act [enacting sections 634g, 648b, and 657q of this title, chapter 54 and section 4713a of Title 12, Banks and Banking, and section 1320a–7m of Title 42, The Public Health and Welfare, amending this section, sections 278k, 632 to 634, 634c, 636, 637, 644, 648, 649, 656, 657a, 689d, 695, and 696 of this title, section 604 of Title 5, Government Organization and Employees, section 2382 of Title 10, Armed Forces, and sections 38 to 40, 55, 72, 162, 168, 179, 195, 280F, 402A, 460, 861, 862, 864, 1202, 1374, 1400L, 1400N, 6041, 6330, 6707A, 6721, and 6722 of Title 26, Internal Revenue Code, repealing former section 634g of this title, enacting provisions set out as

notes under this section, sections 271, 278n, 632, 636, 637, 644, 649, 649b, and 696 of this title, sections 4741 and 5701 of Title 12, sections 1, 38 to 40, 72, 162, 168, 179, 195, 280F, 402A, 460, 861, 1202, 1374, 6041, 6330, 6655, 6662A, 6707A, and 6721 of Title 26, and sections 428 and 433 of Title 41, Public Contracts, amending provisions set out as notes under this section, and repealing provisions set out as notes under section 644 of this title] may be cited as the 'Small Business Jobs Act of 2010'."

Pub. L. 111–240, title I, §1101, Sept. 27, 2010, 124 Stat. 2507, provided that: "This subtitle [subtitle A (§§1101–1136) of title I of Pub. L. 111–240, enacting section 4713a of Title 12, Banks and Banking, amending sections 632, 634, 636, 689d, 695, and 696 of this title, and enacting provisions set out as notes under sections 632, 636, and 696 of this title] may be cited as the 'Small Business Job Creation and Access to Capital Act of 2010'."

Pub. L. 111–240, title I, §1201, Sept. 27, 2010, 124 Stat. 2520, provided that: "This subtitle [subtitle B (§§1201–1209) of title I of Pub. L. 111–240, amending this section and sections 632, 633, 636, 648, and 649 of this title and enacting provisions set out as notes under sections 636, 649, and 649b of this title] may be cited as the 'Small Business Export Enhancement and International Trade Act of 2010'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–234, title XII, §12051, May 22, 2008, 122 Stat. 1406, and Pub. L. 110–246, §4(a), title XII, §12051, June 18, 2008, 122 Stat. 1664, 2168, provided that: "This subtitle [subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, enacting sections 636e to 636k and 657i to 657o of this title, amending sections 632, 633, and 636 of this title, enacting provisions set out as notes under section 636 of this title, and amending provisions set out as a note under this section] may be cited as the 'Small Business Disaster Response and Loan Improvements Act of 2008'."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–186, §1, Feb. 14, 2008, 122 Stat. 623, provided that: "This Act [amending sections 632, 636, 648, 657b, and 657c of this title, enacting provisions set out as notes under sections 636 and 637 of this title, and amending provisions set out as a note under section 657b of this title] may be cited as the 'Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008'."

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8301, May 25, 2007, 121 Stat. 204, provided that: "This subtitle [subtitle C (§§8301–8306) of title VIII of Pub. L. 110–28, amending section 656 of this title and section 10a of Title 41, Public Contracts, enacting provisions set out as notes under section 656 of this title and section 9858 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 601 of Title 5, Government Organization and Employees] may be cited as the 'Small Business and Work Opportunity Act of 2007'."

SHORT TITLE OF 2004 AMENDMENT

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

SHORT TITLE OF 2001 AMENDMENT

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

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(9) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–667, provided that: "This Act [H.R. 5667, as enacted by section 1(a)(9) of Pub. L. 106–554, see Tables for classification] may be cited as the 'Small Business Reauthorization Act of 2000'."

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

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

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

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

SHORT TITLE OF 1999 AMENDMENT

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

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

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

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

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

SHORT TITLE OF 1998 AMENDMENT

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

SHORT TITLE OF 1997 AMENDMENT

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

Pub. L. 105-135, title VI, §601, Dec. 2, 1997, 111 Stat. 2627, provided that: "This title [enacting section 657a of this title, amending sections 631b, 632, 637, 644, 645, and 694b of this title, section 2323 of Title 10, Armed Forces, section 1441a of Title 12, Banks and Banking, sections 3718, 6701, and 7505 of Title 31, Money and Finance, sections 405 and 417a of Title 41, Public Contracts, section 13556 of Title 42, The Public Health and Welfare, and sections 47107 and 47113 of Title 49, Transportation, enacting provisions set out as notes under this section and sections 632 and 657a of this title, and amending provisions set out as notes under this section] may be cited as the 'HUBZone Act of 1997'."

SHORT TITLE OF 1996 AMENDMENT

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

title, and repealing provisions set out as a note under section 634 of this title] may be cited as the 'Small Business Programs Improvement Act of 1996'."

SHORT TITLE OF 1995 AMENDMENT

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

SHORT TITLE OF 1994 AMENDMENT

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

SHORT TITLE OF 1993 AMENDMENT

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

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-564, §1(a), Oct. 28, 1992, 106 Stat. 4249, provided that: "This Act [amending sections 634, 636, 637, and 638 of this title and section 4124 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this section and section 638 of this title, amending provisions set out as notes under sections 644 and 648 of this title, and repealing provisions set out as a note under section 638 of this title] may be cited as the 'Small Business Research and Development Enhancement Act of 1992'."

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

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

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

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

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

SHORT TITLE OF 1991 AMENDMENT

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

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-574, §1, Nov. 15, 1990, 104 Stat. 2814, provided that: "This Act [enacting sections 653 and 654 of this title, amending sections 633, 636, 637, 639, 644, 648, 683, 695, and 696 of this title, enacting

provisions set out as notes under this section and sections 633, 637, 648, 648a, 653, and 683 of this title and section 601 of Title 5, Government Organization and Employees, amending provisions set out as notes under this section and sections 633, 636, 637, 644, and 694b of this title and section 502 of Title 44, Public Printing and Documents, and repealing provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendments Act of 1990'."

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

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-37, §1, June 15, 1989, 103 Stat. 70, provided that: "This Act [amending this section and sections 633, 636, 637, 639, and 644 of this title, enacting provisions set out as a note under this section, and amending provisions set out as notes under this section and sections 633, 636, 637, and 644 of this title] may be cited as the 'Business Opportunity Development Reform Act Technical Corrections Act'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-656, §1(a), Nov. 15, 1988, 102 Stat. 3853, provided that: "This Act [amending this section, sections 632, 633, 636, 637, 639, 644, and 645 of this title, and section 541 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under this section and sections 632, 633, 636, and 637 of this title, and amending provisions set out as a note under section 644 of this title] may be cited as the 'Business Opportunity Development Reform Act of 1988'."

Pub. L. 100-590, §1(a), Nov. 3, 1988, 102 Stat. 2989, provided that: "This Act [enacting sections 687m and 697c of this title, amending this section and sections 631b, 632, 633, 634, 636, 637, 638, 644, 648, 681, 687b, and 694b to 697b of this title, repealing section 694 of this title, enacting provisions set out as notes under this section and sections 636, 637, 639, 644, 661, 694, 694b, and 697 of this title, and amending provisions set out as notes under this section and sections 633 and 637 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendment Act of 1988'."

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

Pub. L. 100-418, title VIII, §8001, Aug. 23, 1988, 102 Stat. 1553, provided that: "This title [amending this section and sections 636, 648, 649, and 696 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 638 of this title] may be cited as the 'Small Business International Trade and Competitiveness Act'."

SHORT TITLE OF 1984 AMENDMENT

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

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

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

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-219, §1, July 22, 1982, 96 Stat. 217, provided that: "This Act [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Innovation Development Act of 1982'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-35, title XIX, §1901, Aug. 13, 1981, 95 Stat. 767, provided that: "This title [amending sections 632, 633, 636, 639, and 696 of this title, repealing section 636a of this title, enacting provisions set out as

notes under sections 632 and 636 of this title, and amending provisions set out as notes under this section] may be cited as the 'Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–481, title I, §110, Oct. 21, 1980, 94 Stat. 2323, provided that: "This part [part B (§§110–113) of title I of Pub. L. 96–481 enacting section 649 of this title, amending section 636 of this title and enacting provisions set out as notes under section 649 of this title] may be cited as the 'Small Business Export Expansion Act of 1980'."

Pub. L. 96–302, title II, §201, July 2, 1980, 94 Stat. 843, provided that: "This title [enacting section 648, amending section 636, and enacting provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Development Center Act of 1980'."

Pub. L. 96–302, title III, §301, July 2, 1980, 94 Stat. 848, provided that: "This title [enacting sections 631a and 631b of this title] may be cited as the 'Small Business Economic Policy Act of 1980'."

Pub. L. 96–302, title V, §501, July 2, 1980, 94 Stat. 850, provided that: "This title [amending sections 632 and 636 of this title and enacting provisions set out as notes under sections 631 and 636 of this title] may be cited as the 'Small Business Employee Ownership Act of 1980'."

SHORT TITLE OF 1978 AMENDMENT

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

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–386, §1, Aug. 23, 1974, 88 Stat. 742, provided: "That this Act [enacting section 694c of this title, amending this section, sections 633, 634, 636, 639, 647, 694, and 694b of this title, and sections 2855, 2942, 2949, and 2982 of Title 42, The Public Health and Welfare, repealing sections 2901, 2902, 2905, 2906, 2906a, 2906b, 2906c, and 2907 of Title 42, and enacting provisions set out as notes under sections 633 and 694 of this title] may be cited as the 'Small Business Amendments of 1974'."

SHORT TITLE OF 1967 AMENDMENT

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

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–305, §1, Sept. 26, 1961, 75 Stat. 666, provided: "That this Act [amending this section, sections 633, 634, 636, 637, and 639 of this title, and section 4558 of Title 50, War and National Defense] may be cited as the 'Small Business Act Amendments of 1961'."

SHORT TITLE

Pub. L. 85–536, §2[1], July 18, 1958, 72 Stat. 384, provided that this chapter should be known as the "Small Business Act".

REPEAL OF INCONSISTENT LAWS

Pub. L. 85–536, §2[49], formerly §2[21], July 18, 1958, 72 Stat. 396, renumbered §2[30] by Pub. L. 96–302, title II, §202, July 2, 1980, 94 Stat. 843; renumbered §2[31] by Pub. L. 104–121, title II, §222(1), Mar. 29, 1996, 110 Stat. 860; renumbered §2[32] by Pub. L. 105–135, title VI, §602(b)(1)(A), Dec. 2, 1997, 111 Stat. 2629; renumbered §2[34] by Pub. L. 106–50, title II, §201(b)(1), Aug. 17, 1999, 113 Stat. 235; renumbered §2[36] by Pub. L. 106–554, §1(a)(9) [title I, §111(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674; renumbered §2[37] by Pub. L. 108–183, title III, §308, Dec. 16, 2003, 117 Stat. 2662; renumbered §2[44] by Pub. L. 110–234, title XII, §12062(1), May 22, 2008, 122 Stat. 1407; Pub. L. 110–246, §4(a), title XII, §12062(1), June 18, 2008, 122 Stat. 1664, 2169; renumbered §2[45] by Pub. L. 111–240, title I, §1313(a)(1), Sept. 27, 2010, 124 Stat. 2538; renumbered §2[47] by Pub. L. 112–239, div. A, title XVI, §1641(1), Jan. 2, 2013, 126 Stat. 2076; renumbered §2[49] by Pub. L. 115–189, §3(a)(1), June 21, 2018, 132 Stat. 1492, provided that: "All laws and parts of laws inconsistent with this Act [this chapter] are hereby repealed to the extent of such inconsistency."

REGULATIONS

Pub. L. 105–135, title IV, §417, Dec. 2, 1997, 111 Stat. 2620, provided that:

"(a) PROPOSED REGULATIONS.—Proposed amendments to the Federal Acquisition Regulation or proposed Small Business Administration regulations under this subtitle [subtitle B (§§411–417) of title IV of Pub. L. 105–135, amending this section and sections 632, 637 and 644 of this title and enacting provisions set out as notes under section 637 of this title and section 1122 of Title 41, Public Contracts] and the amendments made by this subtitle shall be published not later than 120 days after the date of enactment of this Act [Dec. 2, 1997] for the purpose of obtaining public comment pursuant to section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707], or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

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

Pub. L. 100–590, title I, §136, Nov. 3, 1988, 102 Stat. 3007, provided that: "Notwithstanding any law, rule or regulation, the Small Business Administration shall promulgate final regulations to be effective on publication to carry out the provisions of this title [see Effective Date of 1988 Amendments note above] within six months after the date of enactment [Nov. 3, 1988]."

Pub. L. 100–418, title VIII, §8013, Aug. 23, 1988, 102 Stat. 1563, provided that: "Notwithstanding any law, rule, or regulation, the Small Business Administration shall promulgate final regulations to carry out the provisions of this title [see Short Title of 1988 Amendments note above] within six months after the date of enactment of this title [Aug. 23, 1988]."

SEPARABILITY

Pub. L. 85–536, §2[19], July 18, 1958, 72 Stat. 396, provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 85–536, §2[20], July 18, 1958, 72 Stat. 396, as amended by Pub. L. 87–341, §11(h)(2), Oct. 3, 1961, 75 Stat. 757; Pub. L. 95–89, title I, §102, Aug. 4, 1977, 91 Stat. 553; Pub. L. 95–315, §§5, 7, July 4, 1978, 92 Stat. 379; Pub. L. 96–302, title I, §§101, 110, July 2, 1980, 94 Stat. 833, 837; Pub. L. 97–35, title XIX, §§1905, 1906, Aug. 13, 1981, 95 Stat. 772–777; Pub. L. 98–270, title III, §§302, 305, Apr. 18, 1984, 98 Stat. 160, 161; Pub. L. 98–395, §3, Aug. 21, 1984, 98 Stat. 1367; Pub. L. 99–272, title XVIII, §§18001, 18002, 18012, Apr. 7, 1986, 100 Stat. 361, 363, 369; Pub. L. 100–72, §1, July 11, 1987, 101 Stat. 477; Pub. L. 100–418, title VIII, §§8004, 8006(a), Aug. 23, 1988, 102 Stat. 1556, 1557; Pub. L. 100–590, title I, §§101, 135(1), (2), Nov. 3, 1988, 102 Stat. 2990, 3007; Pub. L. 101–574, title I, §§101, 102, Nov. 15, 1990, 104 Stat. 2815, 2817; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–366, title I, §§102, 115(a), title IV, §§405, 414, Sept. 4, 1992, 106 Stat. 987, 993, 1014, 1018; Pub. L. 103–81, §2, Aug. 13, 1993, 107 Stat. 780; Pub. L. 103–282, §1, July 22, 1994, 108 Stat. 1422; Pub. L. 103–403, title I, §101, Oct. 22, 1994, 108 Stat. 4176; Pub. L. 104–208, div. D, title II, §208(i)(2), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 105–135, title I, §101, title II, §211, title VI, §607, Dec. 2, 1997, 111 Stat. 2594, 2600, 2635; Pub. L. 106–9, §2(b), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–24, §1(b), Apr. 27, 1999, 113 Stat. 39; Pub. L. 106–554, §1(a)(8) [§1(c)], §1(a)(9) [title V, §502, title VIII, §804(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664, 2763A–691, 2763A–703; Pub. L. 107–20, title II, §2203(a), July 24, 2001, 115 Stat. 170; Pub. L. 108–217, §3, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108–447, div. K, title I, §121, Dec. 8, 2004, 118 Stat. 3446; Pub. L. 115–189, §5, June 21, 2018, 132 Stat. 1497; Pub. L. 116–260, div. N, title III, §329(d), Dec. 27, 2020, 134 Stat. 2042, provided that:

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

"(A) to carry out the Small Business Development Center Program under section 21 [15 U.S.C. 648], but not to exceed the annual funding level, as specified in section 21(a);

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

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

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

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

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

"(2) Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under this Act [15 U.S.C. 631 et seq.] and the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], 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 [15 U.S.C. 681 et seq.] 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 [15 U.S.C. 631 et seq.] 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 [15 U.S.C. 636(b)(1), (2)]; and there are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for such administrative expenses.

"(c) **DISASTER MITIGATION PILOT PROGRAM.**—The following program levels are authorized for loans under section 7(b)(1)(C) [15 U.S.C. 636(b)(1)(C)]:

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

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

"(d) **FISCAL YEAR 2005.**—

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

"(A) For the programs authorized by this Act [15 U.S.C. 631 et seq.], the Administration is authorized to make—

"(i) \$75,000,000 in technical assistance grants, as provided in section 7(m) [15 U.S.C. 636(m)]; and

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

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

"(i) \$16,500,000,000 in general business loans, as provided in section 7(a) [15 U.S.C. 636(a)];

"(ii) \$6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958 [15 U.S.C. 697a];

"(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 [15 U.S.C. 681 et seq.], the Administration is authorized to make—

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

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

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [15 U.S.C. 694a et seq.], 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 [15 U.S.C. 694b(a)(3)].

"(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) [15 U.S.C. 637(b)(1)].

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b) [15 U.S.C. 636(b)], and to carry out the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], including salaries and expenses of the Administration.

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

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

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

"(e) FISCAL YEAR 2006.—

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

"(A) For the programs authorized by this Act [15 U.S.C. 631 et seq.], the Administration is authorized to make—

"(i) \$80,000,000 in technical assistance grants, as provided in section 7(m) [15 U.S.C. 636(m)]; and

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

"(B) For the programs authorized by this Act, the Administration is authorized to make \$25,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) \$17,000,000,000 in general business loans, as provided in section 7(a) [15 U.S.C. 636(a)];

"(ii) \$7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958 [15 U.S.C. 697a];

"(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 [15 U.S.C. 681 et seq.], the Administration is authorized to make—

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

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

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [15 U.S.C. 694a et seq.], 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 [15 U.S.C. 694b(a)(3)].

"(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) [15 U.S.C. 637(b)(1)].

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b) [15 U.S.C. 636(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 2006—

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

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

"(f) FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.—For fiscal year 2004, for the programs authorized by title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), the Administration is authorized to make—

"(1) \$4,000,000,000 in purchases of participating securities; and

"(2) \$3,000,000,000 in guarantees of debentures.

"(g) AUTHORITY TO INCREASE AMOUNT OF GENERAL BUSINESS LOANS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3) and with respect to fiscal year 2019 and each fiscal year thereafter, if the Administrator determines that the amount of commitments by the Administrator for general business loans authorized under section 7(a) [15 U.S.C. 636(a)] for a fiscal year could exceed the limit on the total amount of commitments the Administrator may make for those loans under this Act, an appropriations Act, or any other provision of law, the Administrator may make commitments for those loans for that fiscal year in an aggregate amount equal to not more than 115 percent of that limit.

"(2) NOTICE REQUIRED BEFORE EXERCISING AUTHORITY.—Not later than 30 days before the date on which the Administrator intends to exercise the authority under paragraph (1), the Administrator shall submit notice of intent to exercise the authority to—

"(A) the Committee on Small Business and Entrepreneurship and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the Senate; and

"(B) the Committee on Small Business and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the House of Representatives.

"(3) LIMITATION.—The Administrator shall not exercise the authority under paragraph (1) more than once during any fiscal year.

"(h) MICROLOAN PROGRAM.—For each of fiscal years 2021 through 2025, the Administration is authorized to make—

"(1) \$80,000,000 in technical assistance grants, as provided in section 7(m) [15 U.S.C. 636(m)]; and

"(2) \$110,000,000 in direct loans, as provided in section 7(m)."

CATEGORY MANAGEMENT TRAINING

Pub. L. 116–283, div. A, title VIII, §871, Jan. 1, 2021, 134 Stat. 3788, provided that:

"(a) IN GENERAL.—Not later than 8 months after the date of the enactment of this section [Jan. 1, 2021], the Administrator of the Small Business Administration, in coordination with the Administrator of the Office of Federal Procurement Policy and any other head of a Federal agency (as determined by the Administrator), shall develop a training curriculum on category management for staff of Federal agencies with procurement or acquisition responsibilities. Such training shall include—

"(1) best practices for procuring goods and services from small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)); and

"(2) information on avoiding conflicts with the requirements of the Small Business Act (15 U.S.C. 631 et seq.).

"(b) USE OF CURRICULUM.—The Administrator of the Small Business Administration—

"(1) shall ensure that staff for Federal agencies described in subsection (a) receive the training described in such subsection; and

"(2) may request the assistance of the relevant Director of Small and Disadvantaged Business Utilization (as described in section 15(k) of the Small Business Act (15 U.S.C. 644(k))) to carry out the requirements of paragraph (1).

"(c) SUBMISSION TO CONGRESS.—The Administrator of the Small Business Administration shall provide a copy of the training curriculum developed under subsection (a) to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.

"(d) CATEGORY MANAGEMENT DEFINED.—In this section, the term 'category management' has the meaning given by the Director of the Office of Management and Budget."

SMALL BUSINESS ACT CONTRACTING REQUIREMENTS TRAINING

Pub. L. 112–239, div. A, title XVI, §1622(a), (b), Jan. 2, 2013, 126 Stat. 2069, provided that:

"(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this part [Jan. 2, 2013], the Defense Acquisition University and the Federal Acquisition Institute shall each provide a course on contracting requirements under the Small Business Act [15 U.S.C. 631 et seq.], including the requirements for small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

"(b) COURSE REQUIRED.—To have a Federal Acquisition Certification in Contracting (or any successor

certification) or the equivalent Department of Defense certification an individual shall be required to complete the course established under subsection (a)."

AGENCY ACHIEVEMENT OF SMALL BUSINESS GOALS

Pub. L. 112-239, div. A, title XVI, §1633(b), (c), Jan. 2, 2013, 126 Stat. 2076, as amended by Pub. L. 114-92, div. A, title VIII, §871, Nov. 25, 2015, 129 Stat. 939, provided that:

"(b) **RESPONSIBILITY FOR ACHIEVING SMALL BUSINESS GOALS.**—The head of an agency shall take steps to ensure that members of the senior executive service, as defined under section 3396(a) of title 5, United States Code, responsible for acquisition, other senior officials responsible for acquisition, and other members of the senior executive service, as appropriate, assume responsibility for the agency's success in achieving each of the small business prime contracting and subcontracting goals and percentages by—

"(1) promoting a climate or environment that is responsive to small business concerns;

"(2) communicating the importance of achieving the agency's small business contracting goals; and

"(3) encouraging small business awareness, outreach, and support.

"(c) **DEFINITIONS.**—In this section [enacting this note and provisions set out as a note under section 3396 of Title 5, Government Organization and Employees] the term 'responsible for acquisition', with respect to a member of the senior executive service or other senior official, means such a member or official who acquires services or supplies, directs agency organizations to acquire services or supplies, oversees acquisition officials, including program managers, contracting officers, and other acquisition workforce personnel responsible for formulating and approving acquisition strategies and plans."

LOAN APPLICATION PROCESSING

Pub. L. 106-554, §1(a)(9) [title VIII, §801], Dec. 21, 2000, 114 Stat. 2763, 2763A-702, required the Administrator of the Small Business Administration to conduct a loan application processing study and to transmit the results to Congress not later than 1 year after Dec. 21, 2000.

SERVICE DISABLED VETERANS

Pub. L. 105-135, title VII, §§701-704, 707, 709, Dec. 2, 1997, 111 Stat. 2636-2638, provided that:

"SEC. 701. PURPOSES.

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

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

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

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

"SEC. 702. DEFINITIONS.

"In this title:

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

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

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

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

"SEC. 703. REPORT BY SMALL BUSINESS ADMINISTRATION.

"(a) **STUDY AND REPORT.**—

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

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

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

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

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

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

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

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

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

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

"SEC. 704. INFORMATION COLLECTION.

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

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

"The Administrator shall take such actions as may be necessary to ensure that small business concerns owned and controlled by eligible veterans have access to programs established under the Small Business Act [15 U.S.C. 631 et seq.] that provide entrepreneurial training, business development assistance, counseling, and management assistance to small business concerns, including, among others, the Small Business Development Center program and the Service Corps of Retired Executives (SCORE) program.

"SEC. 709. OUTREACH FOR ELIGIBLE VETERANS.

"The Administrator, the Secretary of Veterans Affairs, and the Assistant Secretary of Labor for Veterans' Employment and Training, shall develop and implement a program of comprehensive outreach to assist eligible veterans, which program shall include business training and management assistance, employment and relocation counseling, and dissemination of information on veterans' benefits and veterans' entitlements."

TRANSITION REIMBURSEMENT

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

BUY AMERICAN PREFERENCE IN PROVISION OF FINANCIAL ASSISTANCE

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

FEASIBILITY STUDY OF BUSINESS COOPERATION NETWORK

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

DEVELOPMENT OF WOMEN'S BUSINESS ENTERPRISE

Pub. L. 100–533, title IV, §§401–407, Oct. 25, 1988, 102 Stat. 2694, as amended, formerly set out as a note under this section, was transferred to chapter 97 (§7101 et seq.) of this title.

DISADVANTAGED SMALL BUSINESSES

Pub. L. 100–533, title V, §504, Oct. 25, 1988, 102 Stat. 2698, provided that: "Nothing contained in this Act [see Short Title of 1988 Amendment note above] is intended to reduce or limit any programs, benefit, or

activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3))."

GLOBALIZATION OF PRODUCTION; REPORT TO CONGRESS

Pub. L. 100-418, title VIII, §8009, Aug. 23, 1988, 102 Stat. 1561, directed Administrator of Small Business Administration, within one year after Aug. 23, 1988, to submit a written report to Committees on Small Business of House of Representatives and Senate, prepared by Administration in conjunction with Bureau of Census and in cooperation with other relevant agencies, that would analyze to extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within United States subcontractor tier and to extent that such data is not available determine methods by which such data might be collected; assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and make recommendations as to changes in Government policy that would improve competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

NATIONAL SEMINARS ON SMALL BUSINESS EXPORTS

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

Pub. L. 100-418, title VIII, §8011, Aug. 23, 1988, 102 Stat. 1562, directed Small Business Administration to conduct a National Seminar on Small Business Exports within one year after Aug. 23, 1988, in order to develop recommendations designed to stimulate exports from small companies.

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

Pub. L. 100-418, title VIII, §8012, Aug. 23, 1988, 102 Stat. 1563, provided that:

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

"Further, it is the sense of the Congress that the United States Trade Representative would better serve the needs of the small business community with full-time staff assistance with responsibilities for small business trade issues.

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

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

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

Pub. L. 98-276, May 8, 1984, 98 Stat. 169, directed President to call and conduct a National White House Conference on Small Business not later than Sept. 1, 1986, with Conference to submit a final report to

President and Congress not more than six months from date on which Conference convened, and with that final report to include finding and recommendations of Conference as well as proposals for any legislative action necessary to implement Conference's recommendations; and required Small Business Administration to report to Congress annually during the 3-year period following submission of final report on status and implementation of findings and recommendations of Conference.

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Pub. L. 96-302, title I, §118(c)(1), July 2, 1980, 94 Stat. 840, provided that 1980 Amendment of subsec. (e)(1)(C) by Pub. L. 96-302, §118(a), which included Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the 1978 Amendment made by Pub. L. 95-507, §201, enacting subsec. (e) of this section.

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

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

DEFINITIONS

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

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

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

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

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

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

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11458

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Recommend appropriate legislative or executive actions.

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

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

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

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

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

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

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

SEC. 5. *Policies and Standards.* The Secretary may establish such policies, standards, definitions, criteria,

and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

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

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

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

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

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

ADVISORY COUNCIL FOR MINORITY ENTERPRISE

For provisions relating to termination of, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

Term of the Advisory Council for Minority Enterprise extended until Dec. 31, 1978, see Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12061

Ex. Ord. No. 12061, May 18, 1978, 43 F.R. 21865, as amended by Ex. Ord. No. 12091, Nov. 1, 1978, 43 F.R. 51373, which related to the Small Business Conference Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12269

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

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

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

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

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

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

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

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

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

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

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

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

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

RONALD REAGAN.

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

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

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

Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act [see 5 U.S.C. 1001 et seq.] applicable to the White House Conference on Small Business Authorization Act, except that of reporting annually to the Congress, shall be performed by the Administrator of the Small Business Administration in accordance with the guidelines and procedures established by the Administrator of General Services.

RONALD REAGAN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 8. This order shall be effective immediately.

WILLIAM J. CLINTON.

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

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

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

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

SEC. 2. *Interagency Task Force on Small Business Exports.* (a) The Secretaries of Commerce and Labor, the Administrator of the Small Business Administration, the United States Trade Representative, and the Chairman of the Export-Import Bank shall, within 60 days from the date of this order, establish an interagency

task force through the Trade Promotion Coordinating Committee (TPCC). The task force shall facilitate exports by United States small businesses, including businesses headed by underserved populations, particularly with respect to the People's Republic of China and the countries of Sub-Saharan Africa and the Caribbean Basin. The TPCC shall submit an annual report to the President on the functions carried out by this task force during the preceding year. As part of its work, the task force shall assess the extent to which the establishment of permanent normal trade relations with the People's Republic of China, and the United States enactment of the African Growth and Opportunity Act, 19 U.S.C.A. 3701 *et seq.*, and the United States-Caribbean Basin Trade Partnership Act, 19 U.S.C.A. 2701 note, may contribute to the creation of export opportunities for small businesses including businesses headed by underserved populations.

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

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

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

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

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

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

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

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

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

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

WILLIAM J. CLINTON.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An agency that consists of a multi-member commission shall implement this order to the extent it

determines appropriate to the accomplishment of the agency's mission.

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

GEORGE W. BUSH.

ESTABLISHING AN INTERAGENCY TASK FORCE ON FEDERAL CONTRACTING OPPORTUNITIES FOR SMALL BUSINESSES

Memorandum of President of the United States, Apr. 26, 2010, 75 F.R. 22499, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government is the world's largest purchaser of goods and services, with purchases totaling over \$500 billion per year. The American Recovery and Reinvestment Act of 2009 (Recovery Act) and other national investments are providing new opportunities for small businesses to compete for Federal contracts, and it is critical that these investments tap into the talents and skills of a broad cross-section of American business and industry. Small businesses must be able to participate in the Nation's economic recovery, including businesses owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces. These businesses should be able to compete and participate effectively in Federal contracts.

The Congress has established a number of statutory goals designed to help small businesses compete for Federal contracts. In addition to the goal of awarding at least 23 percent of all Federal prime contracting dollars to small businesses, the Congress also established Government-wide contracting goals for participation by small businesses that are located in Historically Underutilized Business Zones (at least 3 percent) or that are owned by women (at least 5 percent), socially and economically disadvantaged individuals (at least 5 percent), and service-disabled veterans (at least 3 percent). These aspirational goals help ensure that all Americans share in the jobs and opportunities created by Federal procurement.

In recent years, the Federal Government has not consistently reached its small business contracting goals. Although we have made some progress—particularly with respect to Recovery Act contracts—more work can and should be done. I am committed to ensuring that small businesses, including firms owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans, have fair access to Federal Government contracting. Indeed, where small businesses have the capacity to do more, we should strive to exceed the statutory goals. While Chief Acquisition Officers and Senior Procurement Executives have many priorities, small business contracting should always be a high priority in the procurement process.

Obtaining tangible results will require an honest and accurate accounting of our progress so that we can have transparency and accountability through Federal small business procurement data. Additionally, we must expand outreach strategies to alert small firms to Federal contracting opportunities.

In order to coordinate executive departments' and agencies' efforts towards ensuring that all small businesses have a fair chance to participate in Federal contracting opportunities, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established an Interagency Task Force on Federal Contracting Opportunities for Small Businesses (Task Force). The Secretary of Commerce (Secretary), the Director of the Office of Management and Budget (Director), and the Administrator of the Small Business Administration (Administrator) shall serve as Co-Chairs of the Task Force and shall direct its work.

SEC. 2. *Membership.* In addition to the Secretary, the Director, and the Administrator, the Task Force shall consist of the following members:

- (i) the Secretary of the Treasury;
- (ii) the Secretary of Defense;
- (iii) the Attorney General;
- (iv) the Secretary of Labor;
- (v) the Secretary of Housing and Urban Development;
- (vi) the Secretary of Transportation;
- (vii) the Secretary of Veterans Affairs;
- (viii) the Secretary of Homeland Security;
- (ix) the Administrator of General Services;
- (x) the Administrator of the National Aeronautics and Space Administration;
- (xi) the Director of the Minority Business Development Agency;
- (xii) the Director of the Office of Science and Technology Policy;
- (xiii) the Director of the Domestic Policy Council;

(xiv) the Director of the National Economic Council;
(xv) the Chair of the Council of Economic Advisers; and
(xvi) the heads of such other executive departments, agencies, and offices as the President may, from time to time, designate.

A member of the Task Force may designate, to perform the Task Force functions of the member, one or more senior officials who are part of the member's department, agency, or office, and who are full-time officers or employees of the Federal Government.

SEC. 3. *Functions.* The Task Force shall provide to the President, not later than 120 days after the date of this memorandum, proposals and recommendations for:

(i) using innovative strategies, such as teaming, to increase opportunities for small business contractors and utilizing and expanding mentorship programs, such as the mentor-protégé program;

(ii) removing barriers to participation by small businesses in the Federal marketplace by unbundling large projects, improving training of Federal acquisition officials with respect to strategies for increasing small business contracting opportunities, and utilizing new technologies to enhance the effectiveness and efficiency of Federal program managers, acquisition officials, and the Directors of Offices of Small Business Programs and Offices of Small and Disadvantaged Business Utilization, their managers, and procurement center representatives in identifying and providing access to these opportunities;

(iii) expanding outreach strategies to match small businesses, including firms located in Historically Underutilized Business Zones and firms owned and controlled by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces, with contracting and subcontracting opportunities; and

(iv) establishing policies, including revision or clarification of existing legislation, regulations, or policies, that are necessary or appropriate to effectuate the objectives of this memorandum.

SEC. 4. *Using Technology to Improve Transparency and Accountability.* Within 90 days of the date of this memorandum, the Assistant to the President and Chief Technology Officer and the Federal Chief Information Officer, in coordination with the Task Force, shall develop a website that illustrates the participation of small businesses, including those owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces, in Federal contracting. To foster greater accountability and transparency in, and allow oversight of, the Federal Government's progress, this website shall be designed to encourage improved collection, verification, and availability of Federal procurement data and provide accurate data on the Federal Government's progress in ensuring that all small businesses have a fair chance to participate in Federal contracting opportunities.

SEC. 5. *Outreach.* In developing its recommendations, the Task Force shall conduct outreach with representatives of small businesses and small business associations.

SEC. 6. *General Provisions.* (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of any necessary appropriations.

(b) This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) The heads of executive departments and agencies shall assist and provide information to the Task Force, consistent with applicable law, as may be necessary to carry out the functions of the Task Force. Each executive department and agency shall bear its own expenses of participating in the Task Force.

(d) The Director is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

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

² *So in original. Probably should be capitalized.*

³ *So in original. Probably should be "management".*

§631a. Congressional declaration of small business economic policy

(a) Foster small business

For the purpose of preserving and promoting a competitive free enterprise economic system,

Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practical means and to take such actions as are necessary, consistent with its needs and obligations and other essential considerations of national policy, to implement and coordinate all Federal department, agency, and instrumentality policies, programs, and activities in order to: foster the economic interests of small businesses; insure a competitive economic climate conducive to the development, growth and expansion of small businesses; establish incentives to assure that adequate capital and other resources at competitive prices are available to small businesses; reduce the concentration of economic resources and expand competition; and provide an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses.

(b) Capital availability to small business

Congress further declares that the Federal Government is committed to a policy of utilizing all reasonable means, consistent with the overall economic policy goals of the Nation and the preservation of the competitive free enterprise system of the Nation, to establish private sector incentives that will help assure that adequate capital at competitive prices is available to small businesses. To fulfill this policy, departments, agencies, and instrumentalities of the Federal Government shall use all reasonable means to coordinate, create, and sustain policies and programs which promote investment in small businesses, including those investments which expand employment opportunities and which foster the effective and efficient use of human and natural resources in the economy of the Nation.

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

EDITORIAL NOTES

CODIFICATION

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

SHORT TITLE

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

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

(a) Report on Small Business and Competition

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

- (1) examine the current role of small business in the economy on an industry-by-industry basis;
- (2) present current and historical data on production, employment, investment, population, job creation and retention, annual business failures, annual business startups, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy, with, to the extent practicable, specific statistics divided as to urban, suburban, and rural areas;
- (3) identify economic trends which will or may affect the small business sector and the state of competition;
- (4) examine the effects on small business and competition of policies, programs, and activities, including, but not limited to the Internal Revenue Code [26 U.S.C. 1 et seq.], the Employee

Retirement Income Security Act [29 U.S.C. 1001 et seq.], the Securities Act of 1933 [15 U.S.C. 77a et seq.], and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and regulations promulgated thereunder; identify problems generated by such policies, programs, and activities; and recommend legislative and administrative solutions to such problems; and

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

(b) Appendix to report

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

(c) Supplementary reports

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

(d) Referral to Congressional committees

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

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

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

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

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

The Employee Retirement Income Security Act, referred to in subsec. (a)(4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

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

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

Section 632(p) of this title, referred to in subsec. (e)(3), was redesignated section 657a(b) of this title by

Pub. L. 115–91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795.

CODIFICATION

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

AMENDMENTS

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

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

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE

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

TERMINATION OF REPORTING REQUIREMENTS

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

¹ [*See 1988 Amendment note below.*](#)

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

³ [*See References in Text note below.*](#)

§631c. Small Business Manufacturing Task Force

(a) Establishment

The Administrator of the Small Business Administration (referred to in this subtitle ¹ as the "Administrator") shall establish a Small Business Manufacturing Task Force (referred to in this

section as the "Task Force") to address the concerns of small manufacturers.

(b) Chair

The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) Duties

The Task Force shall—

- (1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;
- (2) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and
- (3) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) Meetings

(1) Frequency

The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) Quorum

A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) Personnel matters

(1) Compensation of members

Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) Detail of SBA employees

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

(f) Report

Not later than 1 year after December 8, 2004, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

- (1) the President;
- (2) the Committee on Small Business and Entrepreneurship of the Senate; and
- (3) the Committee on Small Business of the House of Representatives.

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

CODIFICATION

Section was enacted as part of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Small Business Act which comprises this chapter.

¹ [*See References in Text note below.*](#)

§632. Definitions

(a) Small business concerns

(1) In general

For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, 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) and subject to the requirements specified under subparagraph (C), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this chapter or any other Act.

(B) Additional criteria

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

(C) Requirements

Unless specifically authorized by statute, no Federal department (including the Administration when acting pursuant to subparagraph (A)) 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 24 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 5 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) Variation by industry and consideration of other factors

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.

(4) Exclusion of certain security expenses from consideration for purpose of small business size standards

(A) Determination required

Not later than 30 days after January 6, 2006, the Administrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse

such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

(B) Action required

Not later than 60 days after January 6, 2006, the Administrator shall either—

- (i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or
- (ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) Qualified areas

In this paragraph, the term "qualified area" means—

- (i) Iraq,
- (ii) Afghanistan, and
- (iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of title 26, at the time of performance of the relevant Federal contract or subcontract.

(5) Alternative size standard

(A) In general

The Administrator shall establish an alternative size standard for applicants for business loans under section 636(a) of this title and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) Interim rule

Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 636(a) of this title or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

- (i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and
- (ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) Proposed rulemaking

In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

- (A) a detailed description of the industry for which the new size standard is proposed;
- (B) an analysis of the competitive environment for that industry;
- (C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and
- (D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) Common size standards

In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the

Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) Number of size standards

The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(9) Petitions for reconsideration of size standards

(A) In general

A person may file a petition for reconsideration with the Office of Hearings and Appeals (as established under section 634(i) of this title) of a size standard revised, modified, or established by the Administrator pursuant to this subsection.

(B) Time limit

A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

(C) Process for agency review

The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) Judicial review

The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E) Rules or guidance

The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size standards revised, modified, or established in a Federal Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

(b) "Agency" defined

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

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

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

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

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

(i) which is maintained by such concern, and

(ii) which provides that each participant is entitled to direct the plan trustee as to the manner of how to vote the qualified employer securities (as defined in section 4975(e)(8) of title 26), which are allocated to the account of such participant with respect to a corporate matter which

(by law or charter) must be decided by a vote conducted in accordance with section 409(e) of the title 26; and

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

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

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

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

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

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

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

(B) such concern maintains a plan—

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

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

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

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

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

(d) "Qualified Indian tribe" defined

For purposes of section 636 of this title, the term "qualified Indian tribe" means an Indian tribe as defined in section 5304(a) ¹ of title 25, which owns and controls 100 per centum of a small business concern.

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

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

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

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

(3) which, in the production of commodities and in the provision of services during any fiscal

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

(f) "Handicapped individual" defined

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

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

(2) who is a service-disabled veteran.

(g) "Energy measures" defined

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

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

(2) photovoltaic cells and related equipment;

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

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

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

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

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

(h) "Credit elsewhere" defined

The term "credit elsewhere" means—

(1) for the purposes of this chapter (except as used in section 636(b) of this title), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources, considering factors associated with conventional lending practices, including—

(A) the business industry in which the loan applicant operates;

(B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;

(C) the adequacy of the collateral available to secure the requested loan;

(D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and

(E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

(2) for the purposes of section 636(b) of this title, the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.

(i) "Homeowners" defined

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

(j) "Small agricultural cooperative" defined

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

(k) "Disaster" defined

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

(2) For purposes of section 636(b)(2) of this title, the term "disaster" includes—

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C) ice storms and blizzards.

(l) "Computer crime" defined

For purposes of this chapter—

(1) ² 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) Definitions relating to contracting

In this chapter:

(1) Prime contract

The term "prime contract" has the meaning given such term in section 8701(4) of title 41.

(2) Prime contractor

The term "prime contractor" has the meaning given such term in section 8701(5) of title 41.

(3) Simplified acquisition threshold

The term "simplified acquisition threshold" has the meaning given such term in section 134 of title 41.

(4) Micro-purchase threshold

The term "micro-purchase threshold" has the meaning given such term in section 1902 of title 41.

(5) Total purchases and contracts for property and services

The term "total purchases and contracts for property and services" shall mean total number and total dollar amount of contracts and orders for property and services.

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

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

(1) at least 51 percent of small ³ business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

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

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

In this chapter:

(1) Bundled contract

The term "bundled contract" means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) Bundling of contract requirements

The term "bundling of contract requirements" means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

- (A) the diversity, size, or specialized nature of the elements of the performance specified;
- (B) the aggregate dollar value of the anticipated award;
- (C) the geographical dispersion of the contract performance sites; or
- (D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) Separate smaller contract

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

(p) Qualified HUBZone small business concern

In this chapter, the term "qualified HUBZone small business concern" has the meaning given such term in section 657a(b) of this title.

(q) Definitions relating to veterans

In this chapter, the following definitions apply:

(1) Service-disabled veteran

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

(2) Small business concern owned and controlled by service-disabled veterans

The term "small business concern owned and controlled by service-disabled veterans" means any of the following:

- (A) A small business concern—
 - (i) 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 (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and
 - (ii) 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.

(B) A small business concern—

- (i) not less than 51 percent of which is owned by one or more service-disabled veterans with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or
- (ii) in the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

(C)(i) During the time period described in clause (ii), a small business concern that was a small business concern described in subparagraph (A) or (B) immediately prior to the death of a

service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, if—

(I) the surviving spouse of the deceased veteran acquires such veteran's ownership interest in such concern;

(II) such veteran had a service-connected disability (as defined in section 101(16) of title 38); and

(III) immediately prior to the death of such veteran, and during the period described in clause (ii), the small business concern is included in the database described in section 657f of this title.

(ii) The time period described in this clause is the time period beginning on the date of the veteran's death and ending on the earlier of—

(I) the date on which the surviving spouse remarries;

(II) the date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(III) the date that—

(aa) in the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, is 10 years after the date of the death of the veteran; or

(bb) in the case of a surviving spouse of a veteran with a service-connected disability rated as less than 100 percent disabling who does not die as a result of a service-connected disability, is 3 years after the date of the death of the 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.

(5) Relief from time limitations

(A) In general

Any time limitation on any qualification, certification, or period of participation imposed under this chapter on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10 on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) Duration

Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) Exception for programs subject to Federal Credit Reform Act of 1990

The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(6) ESOP

The term "ESOP" has the meaning given the term "employee stock ownership plan" in section 4975(e)(7) of title 26.

(7) Surviving spouse

The term "surviving spouse" has the meaning given such term in section 101(3) of title 38.

(r) Definitions relating to small business lending companies

As used in section 650 of this title:

(1) Small business lending company

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

(2) Non-Federally regulated lender

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

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

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

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

(s) Major disaster

In this chapter, the term "major disaster" has the meaning given that term in section 5122 of title 42.

(t) Small business development center

In this chapter, the term "small business development center" means a small business development center described in section 648 of this title.

(u) Region of the Administration

In this chapter, the term "region of the Administration" means the geographic area served by a regional office of the Administration established under section 633(a) of this title.

(v) Multiple award contract

In this chapter, the term "multiple award contract" means—

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 4101, 4103, 4105, and 4106 of title 41; and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) Presumption

(1) In general

In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) Deemed certifications

The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) Certification by signature of responsible official

(A) In general

Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) Content of certifications

A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) Regulations

The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) Annual certification

(1) In general

Each business certified as a small business concern under this chapter shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) Regulations

Not later than 1 year after September 27, 2010, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) Policy on prosecutions of small business size and status fraud

Not later than 1 year after September 27, 2010, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) Aquaculture business disaster assistance

Subject to section 647(a) of this title and notwithstanding section 647(b)(1) of this title, the Administrator may provide disaster assistance under section 636(b)(2) of this title to aquaculture enterprises that are small businesses.

(aa) Venture capital operating company

In this chapter, the term "venture capital operating company" means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) Hedge fund

In this chapter, the term "hedge fund" has the meaning given that term in section 1851(h)(2) of title 12.

(cc) Private equity firm

In this chapter, the term "private equity firm" has the meaning given the term "private equity fund" in section 1851(h)(2) of title 12.

(dd) Definitions pertaining to subcontracting

In this chapter:

(1) Subcontract

The term "subcontract" means a legally binding agreement between a contractor that is already under contract to another party to perform work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) First tier subcontractor

The term "first tier subcontractor" means a subcontractor who has a subcontract directly with the prime contractor.

(3) At any tier

The term "at any tier" means any subcontractor other than a subcontractor who is a first tier subcontractor.

(ee) Puerto Rico business

In this chapter, the term "Puerto Rico business" means a small business concern that has its principal office located in the Commonwealth of Puerto Rico.

(ff) Covered territory business

In this chapter, the term "covered territory business" means a small business concern that has its principal office located in one of the following:

- (1) The United States Virgin Islands.
- (2) American Samoa.
- (3) Guam.
- (4) The Northern Mariana Islands.

(Pub. L. 85-536, §2[3], July 18, 1958, 72 Stat. 384; Pub. L. 94-305, title I, §112(b), June 4, 1976, 90 Stat. 667; Pub. L. 95-507, title II, §224(b), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 96-302, title V, §504, July 2, 1980, 94 Stat. 851; Pub. L. 96-481, title I, §108, Oct. 21, 1980, 94 Stat. 2323; Pub. L. 97-35, title XIX, §1903, Aug. 13, 1981, 95 Stat. 771; Pub. L. 98-270, title III, §310, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98-362, §6, July 16, 1984, 98 Stat. 434; Pub. L. 98-473, title I, §111A(b), Oct. 12, 1984, 98 Stat. 1966; Pub. L. 99-272, title XVIII, §18016, Apr. 7, 1986, 100 Stat. 371; Pub. L. 99-500, §101(c) [title X, §921(f)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-149, and Pub. L. 99-591, §101(c) [title X, §921(f)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-149; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-661, div. A, title IX, formerly title IV, §921(f), Nov. 14, 1986, 100 Stat. 3929, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §10(b)(2), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100-456, div. A, title VIII, §845, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 100-590, title I, §119(b), Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100-656, title VII, §732, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 101-510, div. A, title VIII, §806(e)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102-366, title II, §222(a), Sept. 4, 1992, 106 Stat. 999; Pub. L. 103-355, title IV, §4404(a), title VII, §7106(d), Oct. 13, 1994, 108 Stat. 3349, 3376; Pub. L. 103-403, title III, §301, Oct. 22, 1994, 108 Stat. 4187; Pub. L. 104-208, div. D, title I, §104(b)(1),

Sept. 30, 1996, 110 Stat. 3009–730; Pub. L. 105–135, title IV, §412, title VI, §602(a), Dec. 2, 1997, 111 Stat. 2617, 2627; Pub. L. 106–50, title I, §103(a), title IV, §401(a), Aug. 17, 1999, 113 Stat. 234, 243; Pub. L. 106–554, §1(a)(9) [title VI, §§602–604, 611, 612(b)–615(a), title VIII, §806(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–697 to 2763A–701, 2763A–706; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–447, div. K, title I, §§151, 152(a)(1), (3)–(c)(1), 162, Dec. 8, 2004, 118 Stat. 3456, 3457, 3465; Pub. L. 109–59, title X, §10203, Aug. 10, 2005, 119 Stat. 1933; Pub. L. 109–163, div. A, title VIII, §§844, 845(a)(1), Jan. 6, 2006, 119 Stat. 3389, 3390; Pub. L. 110–186, title II, §205, Feb. 14, 2008, 122 Stat. 629; Pub. L. 110–234, title XII, §§12063(c)(1), 12071, May 22, 2008, 122 Stat. 1408, 1411; Pub. L. 110–246, §4(a), title XII, §§12063(c)(1), 12071, June 18, 2008, 122 Stat. 1664, 2170, 2173; Pub. L. 111–240, title I, §§1116, 1202(b)(1), 1311, 1341, 1342, 1343(b), 1501, Sept. 27, 2010, 124 Stat. 2509, 2521, 2536, 2543–2545, 2550; Pub. L. 112–81, div. E, title LI, §5107(b), Dec. 31, 2011, 125 Stat. 1829; Pub. L. 112–239, div. A, title XVI, §§1661, 1696(b)(1), Jan. 2, 2013, 126 Stat. 2083, 2090; Pub. L. 113–66, div. A, title XVI, §1614(b), Dec. 26, 2013, 127 Stat. 949; Pub. L. 114–92, div. A, title VIII, §§866(a), 869(b), Nov. 25, 2015, 129 Stat. 929, 938; Pub. L. 114–187, title IV, §412(a)(1), June 30, 2016, 130 Stat. 595; Pub. L. 114–328, div. A, title XVIII, §§1831(b), 1832(a), 1833(b), Dec. 23, 2016, 130 Stat. 2658, 2661; Pub. L. 115–91, div. A, title XVII, §§1701(a)(2), (3), 1702(b), Dec. 12, 2017, 131 Stat. 1795, 1796, 1803; Pub. L. 115–189, §§3(e), 4(a)(1), June 21, 2018, 132 Stat. 1496; Pub. L. 115–232, div. A, title VIII, §§861(a), 862(h), Aug. 13, 2018, 132 Stat. 1896, 1900; Pub. L. 115–324, §2, Dec. 17, 2018, 132 Stat. 4444; Pub. L. 116–92, div. A, title VIII, §876, Dec. 20, 2019, 133 Stat. 1528; Pub. L. 116–283, div. A, title VIII, §§862(b)(3)(A), 863(a), 866(a)(1), Jan. 1, 2021, 134 Stat. 3779, 3784, 3785; Pub. L. 117–328, div. S, title II, §204(b), Dec. 29, 2022, 136 Stat. 5270.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(5), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689. Title V of the Act is classified generally to subchapter V (§695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

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

The Fishery Resource Disasters Improvement Act, referred to in subsec. (k)(1), is title II of Pub. L. 117–328, div. S, Dec. 29, 2022, 136 Stat. 5261. For complete classification of this Act to the Code, see Short Title of 2022 Amendment note set out under section 1801 of Title 16, Conservation, and Tables.

The Federal Credit Reform Act of 1990, referred to in subsec. (q)(5)(C), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

CODIFICATION

In subsec. (m), "section 134 of title 41" substituted for "section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (v)(1), "sections 4101, 4103, 4105, and 4106 of title 41" substituted for "sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

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

PRIOR PROVISIONS

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

AMENDMENTS

2022—Subsec. (k)(1). Pub. L. 117–328 substituted "(as determined by the Secretary of Commerce under the Fishery Resource Disasters Improvement Act)" for "(as determined by the Secretary of Commerce under section 4107(b) of title 16)".

2021—Subsec. (a)(2)(A). Pub. L. 116–283, §863(a)(1), inserted "and subject to the requirements specified under subparagraph (C)" after "paragraph (1)".

Subsec. (a)(2)(C). Pub. L. 116–283, §863(a)(2)(A), inserted "(including the Administration when acting pursuant to subparagraph (A))" after "no Federal department or agency" in introductory provisions.

Subsec. (a)(2)(C)(ii)(I). Pub. L. 116–283, §863(a)(2)(B), substituted "24 months" for "12 months".

Subsec. (q)(2)(C)(i)(III). Pub. L. 116–283, §862(b)(3)(A), substituted "section 657f of this title" for "section 8127(f) of title 38".

Subsec. (ff). Pub. L. 116–283, §866(a)(1), added subsec. (ff).

2019—Subsec. (q)(2)(C)(i)(II). Pub. L. 116–92, §876(1), struck out "rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such veteran died as a result of a service-connected disability" before the semicolon.

Subsec. (q)(2)(C)(ii)(III). Pub. L. 116–92, §876(2), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: "immediately prior to the death of such veteran, and during the period described in clause (ii), the small business concern is included in the database described in section 8127(f) of title 38."

2018—Subsec. (a)(2)(C)(ii)(II). Pub. L. 115–324 substituted "5 years" for "3 years".

Subsec. (c)(2)(A)(ii). Pub. L. 115–232, §862(h), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of title 26) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and".

Subsec. (h). Pub. L. 115–189, §4(a)(1), added subsec. (h) and struck out former subsec. (h). Prior to amendment, text read as follows: "For purposes of this chapter the term 'credit elsewhere' means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time."

Subsec. (r)(2). Pub. L. 115–189, §3(e), substituted "regulated lender" for "regulated SBA lender" in heading and text.

Subsec. (ee). Pub. L. 115–232, §861(a), added subsec. (ee).

2017—Subsec. (m). Pub. L. 115–91, §1702(b), amended subsec. (m) generally. Prior to amendment, text defined the term "simplified acquisition threshold".

Subsec. (p). Pub. L. 115–91, §1701(a)(2), (3), added subsec. (p) and redesignated and transferred former subsec. (p) of this section to subsec. (b) of section 657a of this title.

2016—Subsec. (a)(1). Pub. L. 114–328, §1831(b), substituted "operation" for "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".

Subsec. (a)(9)(E). Pub. L. 114–328, §1833(b), added subpar. (E).

Subsec. (p)(4)(A). Pub. L. 114–187 amended subpar. (A) generally. Prior to amendment, text read as follows: "The term 'qualified census tract' has the meaning given that term in section 42(d)(5)(C)(ii) of title 26."

Subsec. (q)(2). Pub. L. 114–328, §1832(a)(1), amended par. (2) generally. Text read as follows: "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."

Subsec. (q)(6), (7). Pub. L. 114–328, §1832(a)(2), added pars. (6) and (7).

2015—Subsec. (a)(9). Pub. L. 114–92, §869(b), added par. (9).

Subsec. (p)(1)(F). Pub. L. 114–92, §866(a)(1), added subpar. (F).

Subsec. (p)(3)(D) to (F). Pub. L. 114–92, §866(a)(2), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (p)(4)(D). Pub. L. 114–92, §866(a)(3)(A), amended subpar. (D) generally, substituting new definition of "base closure area" for prior definition which consisted of provisions similar to those in new cl.

(i)(I).

Subsec. (p)(4)(E). Pub. L. 114-92, §866(a)(3)(B), added subpar. (E).

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 114-92, §866(a)(4)(A), substituted "subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3)" for "subparagraph (A), (B), (C), (D), or (E) of paragraph (3)" and struck out "or" at end.

Subsec. (p)(5)(A)(i)(I)(bb), (cc). Pub. L. 114-92, §866(a)(4)(B), (C), added item (bb) and redesignated former item (bb) as (cc).

2013—Pub. L. 112-239, §1661(1), inserted section catchline.

Subsec. (a). Pub. L. 112-239, §1661(2)(A), inserted heading.

Subsec. (a)(1), (3). Pub. L. 112-239, §1661(2)(B), (C), inserted heading.

Subsec. (a)(5). Pub. L. 112-239, §1661(2)(D), realigned margins.

Subsec. (a)(6) to (8). Pub. L. 112-239, §1661(2)(E), added pars. (6) to (8).

Subsec. (p)(5)(A)(i)(III). Pub. L. 112-239, §1696(b)(1)(A), added subcl. (III) and struck out former subcl. (III) which read as follows: "with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that—

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

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

"(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and".

Subsec. (p)(5)(B) to (D). Pub. L. 112-239, §1696(b)(1)(B), (C), redesignated subpar. (D) as (B) and struck out former subpars. (B) and (C) which read as follows:

"(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)."

Subsec. (dd). Pub. L. 113-66 added subsec. (dd).

2011—Subsecs. (aa) to (cc). Pub. L. 112-81 added subsecs. (aa) to (cc).

2010—Subsec. (a)(5). Pub. L. 111-240, §1116, added par. (5).

Subsecs. (t), (u). Pub. L. 111-240, §1202(b)(1), added subsecs. (t) and (u).

Subsec. (v). Pub. L. 111-240, §1311, added subsec. (v).

Subsec. (w). Pub. L. 111-240, §1341, added subsec. (w).

Subsec. (x). Pub. L. 111-240, §1342, added subsec. (x).

Subsec. (y). Pub. L. 111-240, §1343(b), added subsec. (y).

Subsec. (z). Pub. L. 111-240, §1501, added subsec. (z).

2008—Subsec. (k)(2)(C). Pub. L. 110-246, §12071, added subpar. (C).

Subsec. (q)(5). Pub. L. 110-186 added par. (5).

Subsec. (s). Pub. L. 110-246, §12063(c)(1), added subsec. (s).

2006—Subsec. (a)(4). Pub. L. 109-163, §844, added par. (4).

Subsec. (k). Pub. L. 109-163, §845(a)(1), designated existing provisions as par. (1) and added par. (2).

2005—Subsec. (p)(4)(B)(ii)(III). Pub. L. 109-59 added subcl. (III).

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

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

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

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

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

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

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

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

"(ii) 3 years after"

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

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

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

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

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

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

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

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

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

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

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

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

and

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

"(ii) that, based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(C) is approved by the Administrator."

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (c)(2)(A), (3)(B)(i), (iv). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

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

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

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

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

1980—Subsec. (a). Pub. L. 96–481, in the additional criteria inserted proviso that the Administration shall not promulgate, amend, or rescind any rule or regulation with respect to size standards prior to March 31, 1981.

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title VIII, §862(b)(3), Jan. 1, 2021, 134 Stat. 3778, provided that the amendment made by section 862(b)(3)(A) shall take effect on the transfer date (2 years after Jan. 1, 2021, see section 862(a) of Pub. L. 116–283, set out as a note under section 657f of this title).

Pub. L. 116–283, div. A, title VIII, §863(b), Jan. 1, 2021, 134 Stat. 3784, provided that: "This section [amending this section] and the amendments made by this section shall take effect 1 year after the date of the enactment of this Act [Jan. 1, 2021]."

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, §876, Dec. 20, 2019, 133 Stat. 1528, provided that the amendment made by section 876 is effective on the date specified in section 1832(e) of Pub. L. 114–328 (Oct. 1, 2018, see Effective Date of 2016 Amendment note below).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 1701 of Pub. L. 115–91 effective Jan. 1, 2020, see section 1701(j) of Pub. L. 115–91, set out as a note under section 657a of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title XVIII, §1832(e), Dec. 23, 2016, 130 Stat. 2660, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section, section 637 of this title, and section 8127 of Title 38, Veterans' Benefits] shall take effect on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue regulations implementing such sections [probably should be "subsections"] [regulations effective Oct. 1, 2018, see 83 F.R. 48908; see also section 862(c)(3) of Pub. L. 116–283, set out as a note under section 657f of this title]."

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title VIII, §866(b), Nov. 25, 2015, 129 Stat. 931, provided that: "The amendments made by subsection (a)(3)(B) [amending this section] shall apply to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or a catastrophic incident that occurs on or after the date of enactment of such subsection [Nov. 25, 2015]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. D, title I, §104(b)(2), Sept. 30, 1996, 110 Stat. 3009–731, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any disaster occurring on or after March 1, 1994."

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 8752 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, §12(c), Apr. 21, 1987, 101 Stat. 289, provided that: "The amendments made by sections 5 [amending section 2365 of Title 10, Armed Forces, and amending provisions set out as notes under sections 1621, 2326, and 2437 of Title 10] and 10 [amending this section, sections 637 and 644 of this title, and provisions set out as a note under this section] shall apply as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively]."

EFFECTIVE DATE OF 1986 AMENDMENT; INITIAL REVIEW OF STANDARDS

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

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

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

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

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

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–270, title III, §312, Apr. 18, 1984, 98 Stat. 161, provided that: "The amendments made by sections 310 and 311 of this title [amending this section and section 636 of this title] shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2) (A), (B), or (C) of the Small Business Act [15 U.S.C. 636(b)(2)(A), (B), (C)] or with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act."

Pub. L. 98–270, title III, §313, Apr. 18, 1984, 98 Stat. 162, provided that: "This title [amending this section and sections 633, 636, and 647 of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as a note under section 631 of this title] shall take effect October 1, 1983."

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

REGULATIONS

Pub. L. 114–328, div. A, title XVIII, §1835, Dec. 23, 2016, 130 Stat. 2662, provided that: "Not later than 180 days after the date of enactment of this Act [Dec. 23, 2016], the Administrator of the Small Business Administration and the Secretary of Veterans Affairs shall issue guidance pertaining to the amendments made by this title [see Tables for classification] to the Small Business Act [15 U.S.C. 631 et seq.] and section 8127 of title 38, United States Code. The Administrator and the Secretary shall provide notice and opportunity for comment on such guidance for a period of not less than 60 days."

Pub. L. 114–187, title IV, §412(a)(2), June 30, 2016, 130 Stat. 595, provided that: "The Administrator of the Small Business Administration shall issue regulations to implement the amendment made by paragraph (1) [amending this section] not later than 90 days after the date of the enactment of this Act [June 30, 2016]."

Pub. L. 112–239, div. A, title XVI, §1696(c), Jan. 2, 2013, 126 Stat. 2091, provided that: "Not later than 180 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue guidance with respect to the changes made to the Small Business Act [15 U.S.C. 631 et seq.] by the amendments in this subtitle [subtitle C (§§1621–1699a) of title XVI of div. A of Pub. L. 112–239, see Tables for classification], with opportunities for notice and comment."

Pub. L. 109–163, div. A, title VIII, §845(d), Jan. 6, 2006, 119 Stat. 3391, provided that: "Not later than 45 days after the date of enactment of this Act [Jan. 6, 2006], the Administrator of the Small Business Administration shall promulgate final rules to carry out this section [amending this section and section 636 of this title] and the amendments made by this section."

Pub. L. 105–135, title VI, §605, Dec. 2, 1997, 111 Stat. 2635, provided that:

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

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

Pub. L. 102–366, title II, §222(b), Sept. 4, 1992, 106 Stat. 999, provided that:

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

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

IMPLEMENTATION

Pub. L. 113–66, div. A, title XVI, §1614(c), Dec. 26, 2013, 127 Stat. 949, provided that:

"(1) REQUIREMENT FOR PLAN.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Administrator of the Small Business Administration, the Secretary of Defense, and the Administrator of General Services shall submit to the Committee on Small Business and the Committee on Armed Services of the House of Representatives and the Committee on Small Business and Entrepreneurship and the Committee on Armed Services of the Senate a plan to implement this section [amending this section and section 637 of this title] and the amendments made by this section. The plan shall contain assurances that the appropriate tracking mechanisms are in place to enable transparency of subcontracting activities at all tiers.

"(2) COMPLETION OF PLAN ACTIONS.—Not later than one year after the date of the enactment of this Act, the Administrator of the Small Business Administration, the Secretary of Defense, and the Administrator of General Services shall complete the actions required by the plan.

"(3) REGULATIONS.—No later than 18 months after the date of the enactment of this Act, the Administrator of the Small Business Administration shall promulgate any regulations necessary, and the Federal Acquisition Regulation shall be revised, to implement this section and the amendments made by this section.

"(4) APPLICABILITY.—Any regulations promulgated pursuant to paragraph (3) shall apply to contracts entered into after the last day of the fiscal year in which the regulations are promulgated."

SMALL BUSINESS COMPLIANCE GUIDE

Pub. L. 112–239, div. A, title XVI, §1681(c), Jan. 2, 2013, 126 Stat. 2086, provided that: "Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue (pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121; 5 U.S.C. 601 note]) a compliance guide to assist business concerns in accurately determining their status as a small business concern."

PROHIBITION ON USING TARP FUNDS OR TAX INCREASES

Pub. L. 111–240, title I, §1136, Sept. 27, 2010, 124 Stat. 2520, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), nothing in section 1111 [amending section 636 of this title and enacting provisions set out as a note under section 636 of this title], 1112 [amending section 696 of this title], 1113 [amending section 636 of this title], 1114 [124 Stat. 2508], 1115 [amending section 689d of this title], 1116 [amending this section], 1117 [amending section 634 of this title], 1118 [124 Stat. 2509], 1122 [amending section 696 of this title and enacting provisions set out as a note under section 696 of this title], or 1131 [amending section 636 of this title and enacting provisions set out as notes under section 636 of this title], or an amendment made by such sections, shall be construed to limit the ability of Congress to appropriate funds.

"(b) TARP FUNDS AND TAX INCREASES.—

"(1) IN GENERAL.—Any covered amounts may not be used to carry out section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections.

"(2) DEFINITION.—In this subsection, the term 'covered amounts' means—

"(A) the amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 S.C. [sic] 5201 et seq.) [12 U.S.C. 5211 et seq.] to purchase (under section 101 [12 U.S.C. 5211]) or guarantee (under section 102 [12 U.S.C. 5212]) assets under that Act [12 U.S.C. 5201 et seq.]; and

"(B) any revenue increase attributable to any amendment to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] made during the period beginning on the date of enactment of this Act [Sept. 27, 2010] and ending on December 31, 2010."

UPDATED SIZE STANDARDS

Pub. L. 114–328, div. A, title XVIII, §1831(c), Dec. 23, 2016, 130 Stat. 2658, provided that: "Size standards established for agricultural enterprises under section 3(a) of the Small Business Act (15 U.S.C. 632(a)) shall be subject to the rolling review procedures established under section 1344(a) of the Small Business Jobs Act of 2010 [Pub. L. 111–240] (15 U.S.C. 632 note) [set out below]."

Pub. L. 111–240, title I, §1344, Sept. 27, 2010, 124 Stat. 2545, provided that:

"(a) ROLLING REVIEW.—

"(1) IN GENERAL.—The Administrator shall—

"(A) during the 18-month period beginning on the date of enactment of this Act [Sept. 27, 2010], and during every 18-month period thereafter, conduct a detailed review of not less than 1/3 of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

"(B) after completing each review under subparagraph (A) make appropriate adjustments to the size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

"(C) make publicly available—

"(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

"(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and

"(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report

regarding the review, including why the Administrator—

"(i) used the factors and criteria described in subparagraph (C); and

"(ii) adjusted or did not adjust each size standard that was reviewed under the review.

"(2) COMPLETE REVIEW OF SIZE STANDARDS.—The Administrator shall ensure that each size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) is reviewed under paragraph (1) not less frequently than once every 5 years.

"(b) RULES.—Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator shall promulgate rules for conducting the reviews required under subsection (a)."

[For definitions of "Administrator" and "small business concern" as used in section 1344 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out under this section.]

HUBZONE STATUS TIME LINE AND COMMENCEMENT

Pub. L. 112–239, div. A, title XVI, §1698, Jan. 2, 2013, 126 Stat. 2091, provided that:

"(a) DEFINITION.—In this section, the term 'covered base closure area' means a base closure area that, on or before the date of enactment of this Act [Jan. 2, 2013], was treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) pursuant to section 152(a)(2) of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 [Pub. L. 108–447] (15 U.S.C. 632 note).

"(b) TREATMENT AS HUBZONE.—

"(1) IN GENERAL.—Subject to paragraph (2), a covered base closure area shall be treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) during the 5-year period beginning on the date of enactment of this Act.

"(2) LIMITATION.—The total period of time that a covered base closure area is treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) pursuant to this section and section 152(a)(2) of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 632 note) may not exceed 5 years."

Pub. L. 108–447, div. K, title I, §152(a)(2), Dec. 8, 2004, 118 Stat. 3457, which required that a base closure area that had undergone final closure be treated as a HUBZone for purposes of this chapter for 5 years, was repealed by Pub. L. 115–91, div. A, title XVII, §1701(f), (j), Dec. 12, 2017, 131 Stat. 1800, 1803, effective Jan. 1, 2020.

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

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

REPORT ON EFFECT OF 1986 AMENDMENTS

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

DEFINITIONS

Pub. L. 111–240, title I, §1001, Sept. 27, 2010, 124 Stat. 2507, provided that: "In this title [enacting sections 634g, 648b, and 657q of this title and section 4713a of Title 12, Banks and Banking, amending this section, sections 631, 633, 634, 634c, 636, 637, 644, 648, 649, 656, 657a, 689d, 695, and 696 of this title, section 604 of Title 5, Government Organization and Employees, and section 2382 of Title 10, Armed Forces, repealing former section 634g of this title, enacting provisions set out as notes under this section and sections 631, 636, 637, 644, 649, 649b, and 696 of this title, and sections 428 and 433 of Title 41, Public Contracts, amending provisions set out as notes under section 631 of this title, and repealing provisions set out as notes under section 644 of this title]—

"(1) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the

Administrator thereof, respectively; and

"(2) the term 'small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632)."

¹ So in original. Probably should be a reference to subsec. "(e)" of section 5304, which defines Indian tribe.

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

³ So in original. Probably should be preceded by "the".

§633. Small Business Administration

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

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

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

(1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 657b of this title. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 636(j) and 637(a) of this title which provide assistance to minority small business concerns. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator. One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 649 of this title. One such Associate Administrator shall be the Chief

Hearing Officer, who shall administer the Office of Hearings and Appeals established under section 634(i) of this title.

(2) The Administrator also shall be responsible for—

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

- (i) employment, layoffs, and new hires;
- (ii) number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;
- (iii) number of business formations and failures;
- (iv) sales and new orders;
- (v) back orders;
- (vi) investment in plant and equipment;
- (vii) changes in inventory and rate of inventory turnover;
- (viii) sources and amounts of capital investment, including debt, equity, and internally generated funds;
- (ix) debt to equity ratios;
- (x) exports;
- (xi) number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm; and
- (xii) concentration ratios; and

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

(3) RISK MANAGEMENT DATABASE.—

(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 636 of this title and title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.], a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

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

- (i) the identity of the institution making the guaranteed loan or issuing the debenture;
- (ii) the identity of the borrower;
- (iii) the total dollar amount of the loan or debenture;
- (iv) the total dollar amount of government exposure in each loan;
- (v) the district of the Administration in which the borrower has its principal office;
- (vi) the principal line of business of the borrower, as identified by Standard Industrial Classification Code (or any successor to that system);
- (vii) the delinquency rate for each program (including number of instances and days overdue);
- (viii) the number and amount of repurchases, losses, and recoveries in each program;
- (ix) the number of deferrals or forbearances in each program (including days and number of instances);
- (x) comparisons on the basis of loan program, lender, district and region of the Administration, for all the data elements maintained; and
- (xi) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of

business, credit history, and type of loan.

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

- (i) be operational not later than June 30, 1997; and
- (ii) capture data beginning on the first day of the second quarter of fiscal year 1997 beginning after such date and thereafter.

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

- (i) provide small business concerns information regarding—
 - (I) utilization and management of computer technology;
 - (II) computer crimes committed against small business concerns; and
 - (III) security for computers owned or utilized by small business concerns;
- (ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and
- (iii) provide training opportunities to educate small business users on computer security techniques.

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

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

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

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

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

(4) The Administration shall submit to the Committees on Appropriations, Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds established by paragraph (1). Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed by law (sections 9103 and 9104 of title 31) for wholly owned Government corporations.

(5)(A) The Administration is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by paragraph (1) and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administration under this paragraph. The Secretary of the Treasury is authorized and directed to purchase any notes of the Administration issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include the purchase of notes issued by the Administration. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

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

(ii) Following the close of each fiscal year, the Administration shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administration collects during that fiscal year on all financings made under this chapter.

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

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

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

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

(e) Prohibition on provision of assistance

Notwithstanding any other provision of law, the Administration is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

(f) Certification of compliance with child support obligations

(1) In general

For financial assistance approved after the promulgation of final regulations to implement this section, each recipient of financial assistance under this chapter, including a recipient of a direct

loan or a loan guarantee, shall certify that the recipient is not more than 60 days delinquent under the terms of any—

- (A) administrative order;
- (B) court order; or
- (C) repayment agreement entered into between the recipient and the custodial parent or State agency providing child support enforcement services,

that requires the recipient to pay child support, as such term is defined in section 662(b) ¹ of title 42.

(2) Enforcement

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

(g) Business Opportunity Specialists

(1) Duties

The exclusive duties of a Business Opportunity Specialist employed by the Administrator and reporting to the senior official appointed by the Administrator with responsibilities under sections 637, 644, 657a, and 657f of this title (or the designee of such official) shall be to implement sections 636, 637, and 657r of this title and to complete other duties related to contracting programs under this chapter. Such duties shall include—

- (A) with respect to small business concerns eligible to receive contracts and subcontracts pursuant to section 637(a) of this title—
 - (i) providing guidance, counseling, and referrals for assistance with technical, management, financial, or other matters that will improve the competitive viability of such concerns;
 - (ii) identifying causes of success or failure of such concerns;
 - (iii) providing comprehensive assessments of such concerns, including identifying the strengths and weaknesses of such concerns;
 - (iv) monitoring and documenting compliance with the requirements of sections 636 and 637 of this title and any regulations implementing those sections;
 - (v) explaining the requirements of sections 636, 637, 644, 657a, 657f, and 657r of this title; and
 - (vi) advising on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract;
- (B) reviewing and monitoring compliance with mentor-protégé agreements under section 657r of this title;
- (C) representing the interests of the Administrator and small business concerns in the award, modification, and administration of contracts and subcontracts awarded pursuant to section 637(a) of this title; and
- (D) reporting fraud or abuse under section 636, 637, 644, 657a, 657f, or 657r of this title or any regulations implementing such sections.

(2) Certification requirements

(A) In general

Consistent with the requirements of subparagraph (B), a Business Opportunity Specialist described under section 636(j)(10)(D) of this title shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification.

(B) Delay of certification requirement

The certification described in subparagraph (A) is not required—

- (i) for any person serving as a Business Opportunity Specialist on December 12, 2017,

until the date that is one calendar year after the date such person was appointed as a Business Opportunity Specialist; or

(ii) for any person serving as a Business Opportunity Specialist on or before January 3, 2013, until January 3, 2020.

(3) Job posting requirements

The duties and certification requirements described in this subsection shall be included in any initial job posting for the position of a Business Opportunity Specialist.

(h) Commercial market representatives

(1) Duties

The principal duties of a commercial market representative employed by the Administrator and reporting to the senior official appointed by the Administrator with responsibilities under sections 637, 644, 657a, and 657f of this title (or the designee of the official) shall be to advance the policies established in section 637(d)(1) of this title relating to subcontracting, including—

(A) helping prime contractors to find small business concerns that are capable of performing subcontracts;

(B) for contractors awarded contracts containing the clause described in section 637(d)(3) of this title, providing—

(i) counseling on the responsibility of the contractor to maximize subcontracting opportunities for small business concerns;

(ii) instruction on methods and tools to identify potential subcontractors that are small business concerns; and

(iii) assistance to increase awards to subcontractors that are small business concerns through visits, training, and reviews of past performance;

(C) providing counseling on how a small business concern may promote the capacity of the small business concern to contractors awarded contracts containing the clause described in section 637(d)(3) of this title; and

(D) conducting periodic reviews of contractors awarded contracts containing the clause described in section 637(d)(3) of this title to assess compliance with subcontracting plans required under section 637(d)(6) of this title.

(2) Certification requirements

(A) In general

Consistent with the requirements of subparagraph (B), a commercial market representative referred to in section 644(q)(3) of this title shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification.

(B) Delay of certification requirement

The certification described in subparagraph (A) is not required—

(i) for any person serving as a commercial market representative on December 12, 2017, until the date that is one calendar year after the date on which the person was appointed as a commercial market representative; or

(ii) for any person serving as a commercial market representative on or before November 25, 2015, until November 25, 2020.

(3) Job posting requirements

The duties and certification requirements described in this subsection shall be included in any initial job posting for the position of a commercial market representative.

(Pub. L. 85–536, §2[4], July 18, 1958, 72 Stat. 384; Pub. L. 85–699, title II, §202, formerly §202(a), Aug. 21, 1958, 72 Stat. 690, renumbered Pub. L. 87–341, §11(h)(1), Oct. 3, 1961, 75 Stat. 757; amended Pub. L. 86–367, §1, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87–70, title III, §305(c), June 30,

1961, 75 Stat. 167; Pub. L. 87-198, Sept. 5, 1961, 75 Stat. 468; Pub. L. 87-305, §3, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87-341, §§11(h)(3), (4), 12, Oct. 3, 1961, 75 Stat. 757; Pub. L. 87-550, §1(a), July 25, 1962, 76 Stat. 220; Pub. L. 89-59, §§1(c), 2, June 30, 1965, 79 Stat. 207; Pub. L. 89-78, July 21, 1965, 79 Stat. 243; Pub. L. 89-117, title III, §316(d), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89-334, Nov. 8, 1965, 79 Stat. 1294; Pub. L. 89-409, §§1, 2, May 2, 1966, 80 Stat. 132; Pub. L. 89-779, §8(a), (b), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90-104, title I, §102, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90-448, title XVII, §1721, Aug. 1, 1968, 82 Stat. 610; Pub. L. 91-173, title V, §504(c), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91-558, title I, §101, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 91-596, §28(c), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91-597, §25(c), Dec. 29, 1970, 84 Stat. 1634; Pub. L. 92-16, May 18, 1971, 85 Stat. 39; Pub. L. 92-320, §1, June 27, 1972, 86 Stat. 382; Pub. L. 92-385, §2(b), Aug. 16, 1972, 86 Stat. 556; Pub. L. 92-500, §8(b), Oct. 18, 1972, 86 Stat. 899; Pub. L. 92-595, §3(a), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93-237, §§1, 3(b), 8, Jan. 2, 1974, 87 Stat. 1023-1025; Pub. L. 93-386, §§2(a)(2), (3), 7, Aug. 23, 1974, 88 Stat. 742, 748; Pub. L. 94-273, §2(5), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95-14, §§1-3, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95-89, title I, §101(a)-(c), title II, §§201, 202, title III, §304, title IV, §401, Aug. 4, 1977, 91 Stat. 553, 557, 559; Pub. L. 95-315, §4, July 4, 1978, 92 Stat. 379; Pub. L. 95-507, title II, §206, Oct. 24, 1978, 92 Stat. 1766; Pub. L. 96-302, title I, §121, title IV, §401, July 2, 1980, 94 Stat. 842, 849; Pub. L. 96-481, title I, §103, Oct. 21, 1980, 94 Stat. 2321; Pub. L. 97-35, title XIX, §§1908, 1913(b), 1915, Aug. 13, 1981, 95 Stat. 778, 780; Pub. L. 98-270, title III, §306, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98-352, §5, July 10, 1984, 98 Stat. 331; Pub. L. 98-362, §§3, 4, July 16, 1984, 98 Stat. 431, 433; Pub. L. 100-590, title I, §111(a), Nov. 3, 1988, 102 Stat. 2995; Pub. L. 100-656, title IV, §401(a), Nov. 15, 1988, 102 Stat. 3873; Pub. L. 101-37, §11(a), June 15, 1989, 103 Stat. 73; Pub. L. 101-515, title V, §1(a), Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101-574, title II, §221(a), Nov. 15, 1990, 104 Stat. 2823; Pub. L. 102-140, title VI, §609(k), Oct. 28, 1991, 105 Stat. 831; Pub. L. 103-403, title VI, §§601, 611, 612, Oct. 22, 1994, 108 Stat. 4201, 4204; Pub. L. 104-208, div. D, title I, §102, Sept. 30, 1996, 110 Stat. 3009-725; Pub. L. 106-50, title II, §201(a), Aug. 17, 1999, 113 Stat. 235; Pub. L. 108-447, div. K, title I, §132(a), (c), Dec. 8, 2004, 118 Stat. 3452, 3453; Pub. L. 110-234, title XII, §12068(b)(1), May 22, 2008, 122 Stat. 1410; Pub. L. 110-246, §4(a), title XII, §12068(b)(1), June 18, 2008, 122 Stat. 1664, 2172; Pub. L. 111-240, title I, §§1202(b)(2), 1203(b), Sept. 27, 2010, 124 Stat. 2521; Pub. L. 114-92, div. A, title VIII, §§865(a)(1), (b), 869(a)(2), Nov. 25, 2015, 129 Stat. 927, 928, 938; Pub. L. 115-91, div. A, title XVII, §§1704, 1705, Dec. 12, 2017, 131 Stat. 1806, 1807.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

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

Section 636(l) of this title, referred to in subsec. (c)(2)(B), was amended generally to read "[RESERVED]." by Pub. L. 104-208, div. D, title I, §107(d), Sept. 30, 1996, 110 Stat. 3009-732. Subsequently, Pub. L. 111-240, title I, §1131(a), Sept. 27, 2010, 124 Stat. 2512, struck out that subsec. (l) and added a new subsec. (l).

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

CODIFICATION

In subsec. (c)(4), (5)(A), "(sections 9103 and 9104 of title 31)" substituted for "(sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847-849))", and "chapter 31 of title 31" and "such chapter" substituted for "the Second Liberty Bond Act, as amended" and "such Act, as amended", respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2017—Subsec. (g). Pub. L. 115-91, §1704, amended subsec. (g) generally. Prior to amendment, subsec. (g) related to certification requirements for Business Opportunity Specialists.

Subsec. (h). Pub. L. 115-91, §1705, amended subsec. (h) generally. Prior to amendment, subsec. (h) related to certification requirements for commercial market representatives.

2015—Subsec. (b)(1). Pub. L. 114-92, §869(a)(2), inserted at end "One such Associate Administrator shall be the Chief Hearing Officer, who shall administer the Office of Hearings and Appeals established under section 634(i) of this title."

Subsec. (g). Pub. L. 114-92, §865(a)(1), added subsec. (g).

Subsec. (h). Pub. L. 114-92, §865(b), added subsec. (h).

2010—Subsec. (b)(1). Pub. L. 111-240, §1203(b), substituted "Associate Administrators" for "five Associate Administrators" in fifth sentence and inserted at end "One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 649 of this title."

Subsec. (b)(3)(B)(x). Pub. L. 111-240, §1202(b)(2), substituted "district and region of the Administration" for "Administration district and region".

2008—Subsec. (c)(1), (2). Pub. L. 110-246, §12068(b)(1), in pars. (1) and (2) substituted "636(d)(2)" for "636(c)(2)" and in par. (2) struck out "636(e)," after "636(a),".

2004—Subsecs. (g), (h). Pub. L. 108-447, §132(a), (c), temporarily added subsecs. (g) and (h), which related to gifts and co-sponsorship of events, respectively. See Termination Date of 2004 Amendment note below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (c)(5). Pub. L. 96-302, §121, inserted provisions other than subpar. (B)(ii) and incorporated partly in subpar. (A) and in subpar. (B)(ii) prior par. (5) provisions requiring Administration payment of interest on outstanding cash disbursements at close of each fiscal year into the miscellaneous receipts of the Treasury from par. (1) funds at rates that consider current average yields on outstanding interest-bearing marketable Federal debt obligations of comparable maturities as calculated for the September preceding the fiscal year.

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

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

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

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

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

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

Pub. L. 95-14 substituted "\$7,400,000,000" for "\$6,000,000,000", "\$525,000,000" for "\$450,000,000", and "\$887,500,000" for "\$725,000,000".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 92-320 substituted "\$4,300,000,000", "\$500,000,000", and "\$350,000,000" for "\$3,100,000,000", "\$450,000,000" and "\$300,000,000", respectively.

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

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

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

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

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

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

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

1966—Subsec. (b). Pub. L. 89-779 substituted "a Deputy Administrator and three Associate Administrators (including the Associate Administrator specified in section 671 of this title)" for "three Deputy Administrators" as the officers to be appointed by the Administrator to assist in the execution of the functions vested in the Administration, and inserted provision that the Deputy Administrator shall be acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

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

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

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

1965—Subsec. (c). Pub. L. 89-334 substituted "\$1,841,000,000" for "\$1,721,000,000".

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

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

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

1962—Subsec. (c). Pub. L. 87-550 increased the authorized appropriations to the revolving fund from \$1,200,000,000 to \$1,666,000,000, and the aggregate amount outstanding for purposes of sections 636(a), 636(b), and 637(a) of this title from \$875,000,000 to \$1,325,000,000, and for functions under the Small Business Investment Act of 1958 from \$325,000,000 to \$341,000,000 directed that appropriations to the revolving fund shall remain available until expended, required all repayments of loans and debentures, payments of interest, and other receipts arising out of transactions financed from the fund to be paid into the fund, and a report to Congressional committees whenever the aggregate amount outstanding for the purposes of sections 636(a) and 637(a) of this title exceeds \$1,222,000,000, or for the purpose of section 636(b) of this title exceeds \$103,000,000, changed the method of computing interest paid into miscellaneous receipts by substituting provisions requiring payment, following the close of each fiscal year, of interest on the outstanding cash disbursements from the fund, at rates determined by the Secretary of the Treasury, taking into consideration the current average yields on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities as calculated for the month of June preceding such fiscal year, for provisions which required payment of interest, at the close of each fiscal year, on the net amount of cash disbursements from advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities, and eliminated provisions which authorized advances from the revolving fund when requested by the Administration.

1961—Subsec. (c). Pub. L. 87-341, among other changes, substituted "\$1,200,000,000" for "\$1,125,000,000" wherever appearing, and "\$325,000,000" for "\$250,000,000".

Pub. L. 87-305 substituted "\$1,125,000,000" for "\$1,020,000,000" wherever appearing, and "\$725,000,000" for "\$595,000,000".

Pub. L. 87-198 substituted "\$1,020,000,000" for "\$1,000,000,000" wherever appearing, and "\$595,000,000" for "\$575,000,000".

Pub. L. 87-70 substituted "\$1,000,000,000" for "\$975,000,000" wherever appearing, and "\$150,000,000" for "\$125,000,000".

1959—Subsec. (c). Pub. L. 86-367 substituted "\$975,000,000" for "\$900,000,000" wherever appearing, and "\$575,000,000" for "\$500,000,000".

1958—Subsec. (c). Pub. L. 85-699 substituted "\$900,000,000" for "\$650,000,000" wherever appearing, and inserted provisions authorizing the revolving fund to be used in the exercise of the functions of the Administration under the Small Business Investment Act of 1958, and providing that not more than an aggregate of \$250,000,000 shall be outstanding at any one time for the exercise of the functions under the Small Business Investment Act of 1958.

CHANGE OF NAME

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108-447, div. K, title I, §132(c), Dec. 8, 2004, 118 Stat. 3453, provided that: "The amendments made by this section [amending this section and section 637 of this title] are repealed on October 1, 2006."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. D, §3, Sept. 30, 1996, 110 Stat. 3009-725, provided that: "Except as otherwise expressly provided, this Act [probably should be "division", see Short Title of 1996 Amendment note set out under section 631 of this title] and the amendments made by this Act shall take effect on October 1, 1996."

EFFECTIVE DATE OF 1990 AMENDMENTS

Pub. L. 101-574, title II, §221(b), Nov. 15, 1990, 104 Stat. 2823, provided that: "The amendments made by subsection (a) [amending this section] shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the date of the enactment of this Act [Nov. 15, 1990]."

Pub. L. 101-515, §1(b), Nov. 5, 1990, 104 Stat. 2140, provided that: "The provisions of subsection (a) of this section [amending this section] shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the effective date of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-37 applicable as if included in Pub. L. 100-656, see section 32 of Pub. L. 101-37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-656 effective Aug. 15, 1989, see section 803(b)(1)(C) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Pub. L. 98-362, §7, July 16, 1984, 98 Stat. 434, as amended by Pub. L. 100-590, title I, §131(a), Nov. 3, 1988, 102 Stat. 3004; Pub. L. 101-515, title V, §11, Nov. 5, 1990, 104 Stat. 2145; Pub. L. 101-574, title II, §212, Nov. 15, 1990, 104 Stat. 2821; Pub. L. 102-140, title VI, §609(g), Oct. 28, 1991, 105 Stat. 826; Pub. L. 102-366, title II, §225, Sept. 4, 1992, 106 Stat. 1001; Pub. L. 103-403, title IV, §401(b), Oct. 22, 1994, 108 Stat. 4190; Pub. L. 117-286, §4(a)(66), Dec. 27, 2022, 136 Stat. 4312, provided that:

"(a) This Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] shall take effect on October 1, 1984.

"(b) The amendments made to section 4(b)(3) of the Small Business Act [15 U.S.C. 633(b)(3)] by section 3 of this Act are repealed on October 1, 1988. The amendments made to section 8(b)(1)(A) of the Small Business Act [15 U.S.C. 637(b)(1)(A)] by section 5(a)(2) of this Act are repealed on October 1, 1994. Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and chapter 10 of title 5, United States Code."

[Section 401(b) of Pub. L. 103-403, which directed that section 7(b) of Pub. L. 98-362, set out above, be amended in the second sentence by striking out "and the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are" and inserting "is", could not be executed, because the language sought to be struck out begins with "The amendments" and not "and the amendments", and because the amendment would result in an incomplete sentence.]

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as an Effective Date of 1984 Amendments note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 1908 and 1913(b) of Pub. L. 97-35 effective Oct. 1, 1981, and amendment by

section 1915 of Pub. L. 97-35 effective Aug. 13, 1981, but not to affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97-35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-89, title I, §106, Aug. 4, 1977, 91 Stat. 557, provided that: "This title [amending this section, sections 636, 694, 694-2, and 694c of this title, and provisions set out as a note under section 631 of this title] shall become effective on October 1, 1977."

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91-597, see section 29 of Pub. L. 91-597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91-596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as a note under section 651 of Title 29, Labor.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-409, §2, May 2, 1966, 80 Stat. 132, provided that the amendment made by that section is effective July 1, 1966.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Office of Audits and Investigations in Small Business Administration transferred to Office of Inspector General in Small Business Administration, as established by Pub. L. 95-452, §2, Oct. 12, 1978, 92 Stat. 1101, formerly set out in the Appendix to Title 5, Government Organization and Employees. See section 422(a)(1)(T) of Title 5.

ADMINISTRATOR'S ORDER

Pub. L. 106-50, title VII, §701, Aug. 17, 1999, 113 Stat. 249, provided that: "The Administrator of the Small Business Administration shall strengthen and reissue the Administrator's order regarding the third sentence of section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)), relating to nondiscrimination and special considerations for veterans, and take all necessary steps to ensure that its provisions are fully and vigorously implemented."

COMPLETION OF PLANNING FOR LOAN MONITORING SYSTEM

Pub. L. 105-135, title II, §233, Dec. 2, 1997, 111 Stat. 2607, provided that:

"(a) IN GENERAL.—The Administrator shall perform and complete the planning needed to serve as the basis for funding the development and implementation of the computerized loan monitoring system, including—

- "(1) fully defining the system requirement using on-line, automated capabilities to the extent feasible;
- "(2) identifying all data inputs and outputs necessary for timely report generation;
- "(3) benchmark loan monitoring business processes and systems against comparable industry processes and, if appropriate, simplify or redefine work processes based on these benchmarks;
- "(4) determine data quality standards and control systems for ensuring information accuracy;
- "(5) identify an acquisition strategy and work increments to completion;
- "(6) analyze the benefits and costs of alternatives and use to demonstrate the advantage of the final project;
- "(7) ensure that the proposed information system is consistent with the agency's information architecture; and
- "(8) estimate the cost to system completion, identifying the essential cost element.

"(b) REPORT.—

"(1) IN GENERAL.—On the date that is 6 months after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall submit a report on the progress of the Administrator in carrying out subsection (a) to—

"(A) the Committees; and

"(B) the Comptroller General of the United States.

"(2) EVALUATION.—Not later than 28 days after receipt of the report under paragraph (1)(B), the

Comptroller General of the United States shall—

"(A) prepare a written evaluation of the report for compliance with subsection (a); and

"(B) submit the evaluation to the Committees.

"(3) LIMITATION.—None of the funds provided for the purchase of the loan monitoring system may be obligated or expended until 45 days after the date on which the Committees and the Comptroller General of the United States receive the report under paragraph (1)."

ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

Pub. L. 100–656, title IV, §401(b), Nov. 15, 1988, 102 Stat. 3873, as amended by Pub. L. 101–37, §11(b), June 15, 1989, 103 Stat. 73, provided that: "The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Small Business Act [15 U.S.C. 633(b)(1)] shall be a career reserved position."

AVAILABILITY OF FUNDS

Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 396, provided in part that: "hereafter, notwithstanding any law, rule or regulation, moneys in any fund established by the Small Business Act [15 U.S.C. 631 et seq.] which are not needed for current operations shall remain in such funds and shall be available solely to carry out the provisions and purposes of programs operated from such funds pursuant to law as provided in appropriations Acts."

FINDING AND PURPOSE OF 1984 AMENDMENT

Pub. L. 98–362, §2, July 16, 1984, 98 Stat. 431, provided that:

"(a) The Congress hereby finds that—

"(1) there is increased dependency on, and proliferation of, information technology (including computers, data networks, and other communication devices) in the small business community;

"(2) such technology has permitted an increase in criminal activity against small business;

"(3) small businesses in particular frequently lack the education and awareness of computer security techniques and technologies which would enable them to protect their computer systems from unauthorized access and the manipulation or destruction of their computer hardware, software, and stored data;

"(4) profitmaking organizations have substantial expertise in computer technology, communications, and management assistance that is not otherwise available; and

"(5) the use of this expertise in the Small Business Administration's training delivery system would improve substantially the quantity and quality of the agency's management assistance programs.

"(b) The purposes of this Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] are—

"(1) to improve the management by small businesses of their information technology,

"(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

"(3) to permit cooperation with profitmaking organizations in providing management assistance to small business."

AUDIT BY GENERAL ACCOUNTING OFFICE OF SMALL BUSINESS ADMINISTRATION; REPORT TO CONGRESS

Pub. L. 93–386, §13, Aug. 23, 1974, 88 Stat. 750, directed General Accounting Office to conduct a full-scale audit of Small Business Administration, including all field offices and to submit audit to House and Senate not later than six months from Aug. 23, 1974.

NONAVAILABILITY OF UNOBLIGATED FUNDS AFTER JUNE 30, 1974

Pub. L. 93–237, §1, Jan. 2, 1974, 87 Stat. 1023, provided in part that any additional amounts authorized by Pub. L. 93–237 [amending this section, sections 636 and 639 of this title, section 1961 of Title 7, Agriculture, and section 3142–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section, section 636 of this title, and sections 1961 and 1969 of Title 7] which were not obligated by June 30, 1974, were no longer to be available after that date.

ADDITIONAL CAPITAL FOR REVOLVING FUND

The following acts appropriated additional capital:

1965—\$76,000,000—Pub. L. 89–309, ch. IX, Oct. 31, 1965, 79 Stat. 1151.

\$84,000,000—Pub. L. 89–309, ch. IX, Oct. 31, 1965, 79 Stat. 1151 [effective only upon enactment into law

of authorizing legislation].

\$150,000,000—Pub. L. 89–164, title V, Sept. 2, 1965, 79 Stat. 641.

\$100,000,000—Pub. L. 89–16, title I, ch. IX, Apr. 30, 1965, 79 Stat. 92.

1964—\$45,000,000—Pub. L. 88–635, ch. IX, Oct. 7, 1964, 78 Stat. 1032.

1963—\$90,000,000—Pub. L. 88–245, title V, Dec. 30, 1963, 77 Stat. 798.

1962—\$300,000,000—Pub. L. 87–843, title V, Oct. 18, 1962, 76 Stat. 1102.

\$40,000,000—Pub. L. 87–545, title I, July 25, 1962, 76 Stat. 213.

1961—\$160,000,000—Pub. L. 87–332, Sept. 30, 1961, 75 Stat. 742.

\$20,000,000—Pub. L. 87–125, title IV, Aug. 3, 1961, 75 Stat. 281.

1960—\$50,000,000—Pub. L. 86–451, title III, May 13, 1960, 74 Stat. 102.

1959—\$150,000,000—Pub. L. 86–88, title III, July 13, 1959, 73 Stat. 209.

1958—\$200,000,000—Pub. L. 85–766, ch. II, Aug. 27, 1958, 72 Stat. 867.

\$20,000,000—Pub. L. 85–457, June 13, 1958, 72 Stat. 186.

1957—\$100,000,000—Pub. L. 85–170, ch. II, Aug. 28, 1957, 71 Stat. 428.

\$45,000,000—Pub. L. 85–19, ch. I, Apr. 20, 1957, 71 Stat. 16.

1956—\$50,000,000—Act June 20, 1956, ch. 415, title III, 70 Stat. 325.

BUSINESS LOAN AND INVESTMENT FUND; INCREASE IN FINANCING FUNCTIONS; MONTHLY REPORTS TO CONGRESS

Pub. L. 91–151, title III, Dec. 23, 1969, 83 Stat. 378, provided that: "The Small Business Administration shall promptly increase the level of its financing functions utilizing the business loan and investment fund established under section 4(c)(1)(B) of the Small Business Act (15 U.S.C. 633(c)(1)(B)) [subsec. (c)(1)(B) of this section] by \$70,000,000 above the level prevailing at the time of enactment of this Act [Dec. 23, 1969]. The Small Business Administration shall submit to Congress a monthly report of its implementation of this section."

TRANSFER OF FUNDS FOR TRADE ADJUSTMENT LOANS

Pub. L. 89–409, §3(b), May 2, 1966, 80 Stat. 133, provided in part that any unexpended balances of appropriations heretofore appropriated for the purposes of such section [former section 637a of this title] were transferred to the business loan and investment fund established by section 4(c)(1) of the Small Business Act [subsec. (c)(1) of this section].

Such transfer of funds as effective July 1, 1966, see section 3(c) of Pub. L. 89–409, set out as Effective Date of 1966 Amendment note under section 636 of this title.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TRANSFER OF FUNCTIONS

Loan Policy Board, provided for in subsec. (d) of this section, abolished and functions, including functions of chairman and other officers, transferred to Administrator of Small Business Administration by sections 11(b) and 13(a) of Reorg. Plan No. 4 of 1965, eff. July 27, 1965, 30 F.R. 9353, 79 Stat. 1321, set out in the Appendix to Title 5, Government Organization and Employees.

¹ See References in Text note below.

§633a. Detailed justification for proposed changes in budget requests

Beginning in fiscal year 2013 and each fiscal year thereafter, the budget request for the Small Business Administration shall provide a detailed justification of any proposed changes from the enacted level by individual appropriation. The detailed justification shall include at a minimum a description of each credit and non-credit program including amount of funding and costs by

appropriation account and fiscal year. For activities funded in multiple appropriations, the budget justification shall specify the amount included in each enacted appropriation, the amount proposed in the budget year and a justification for any proposed changes.

(Pub. L. 112–74, div. C, title V, §532, Dec. 23, 2011, 125 Stat. 923.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Financial Services and General Government Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Small Business Act which comprises this chapter.

§634. General powers

(a) Seal; appointment and compensation of personnel; use of other services and facilities

The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.

(b) Powers of Administrator

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

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

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

(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this chapter;

(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 6101 of title 41 shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this chapter if the premium therefor or the amount thereof does not exceed \$1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages,

and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this chapter may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 636(a) and 636(b) of this title;

(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter;

(7) in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter: *Provided*, That with respect to deferred participation loans, including loans guaranteed under paragraph (15) or (35) of section 636(a) of this title, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 636(b) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

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

(10) upon purchase by the Administration of any deferred participation entered into under section 636 of this title, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, 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. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to

produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;

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

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

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

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq.] for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this chapter and the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(13) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this paragraph and paragraph (12) shall be utilized solely to facilitate the administration of the program that generated the excess amounts; and

(14) require any lender authorized to make loans under section 636 of this title to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.

(c) Procurement of experts and consultants; compensation and expenses

To such extent as he finds necessary to carry out the provisions of this chapter, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 6101 of title 41. Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5.

(d) Safety deposit box rentals

Section 3324(a) and (b) of title 31 shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

(e) Undertaking or suspension of payment obligation; period; extension of maturity; repayment agreement; "required payments" defined

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this chapter, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While

such payments are being made by the Administration pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

(2) The Administration may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this subsection only if—

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

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

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

(3) Notwithstanding the provisions of sections 636(a)(4)(C) and 636(i)(1) of this title, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

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

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

(ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or

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

(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

(5) The term "required payments" with respect to any loan means payments of principal and interest under the loan.

(f) Sale of guaranteed portion of loans by lender or subsequent holder; limitations; secondary market

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

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

(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

(C) each loan, except each loan made under section 636(a)(14) of this title, shall have been fully disbursed to the borrower prior to any sale.

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

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 636(a) of this title, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 636(a)(6)(C) of this title or subsection (e) of this section.

(g) Trust certificates; guarantee of timely payments of principal and interest; full faith and credit of United States; collection of fees; subrogation; division of loan guarantees

(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this chapter, or under section 696 of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

(4)(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 636(a) of this title: *Provided*, That such fee shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).¹

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

(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 636(a)(23) of this title. The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.

(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

(6) If the amount of the guaranteed portion of any loan under section 636(a) of this title is more than \$500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of \$500,000 and 1 increment of any remaining amount less than \$500,000, in order to permit the maximum amount of any loan in a pool to be not more than \$500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.

(h) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers; electronic registration

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

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

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

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this chapter and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.

(2) The agent described in paragraph (1)(B) may be compensated through any of the fees assessed under this section and any interest earned on any funds collected by the agent while such funds are in the control of the agent and before the time at which the agent is contractually required to transfer such funds to the Administration or to the holders of the trust certificates, as appropriate.

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

(i) Office of Hearings and Appeals

(1) Establishment

(A) Office

There is established in the Administration an Office of Hearings and Appeals—

(i) to impartially decide matters relating to program decisions of the Administrator—

(I) for which Congress requires a hearing on the record; or

(II) that the Administrator designates for hearing by regulation; and

(ii) which shall contain the office of the Administration that handles requests submitted pursuant to sections 552 of title 5 (commonly referred to as the "Freedom of Information Act") and maintains records pursuant to section 552a of title 5 (commonly referred to as the "Privacy Act of 1974").

(B) Jurisdiction

(i) In general

Except as provided in clause (ii), the Office of Hearings and Appeals shall hear appeals of agency actions under or pursuant to this chapter, the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), and title 13 of the Code of Federal Regulations, and shall hear such other matters as the Administrator may determine appropriate.

(ii) Exception

The Office of Hearings and Appeals shall not adjudicate disputes that require a hearing on the record, except disputes pertaining to the small business programs described in this chapter.

(C) Associate Administrator

The head of the Office of Hearings and Appeals shall be the Chief Hearing Officer appointed under section 633(b)(1) of this title, who shall be responsible to the Administrator.

(2) Chief Hearing Officer duties

(A) In general

The Chief Hearing Officer shall—

- (i) be a career appointee in the Senior Executive Service and an attorney licensed by a State, commonwealth, territory or possession of the United States, or the District of Columbia; and
- (ii) be responsible for the operation and management of the Office of Hearings and Appeals.

(B) Alternative dispute resolution

The Chief Hearing Officer may assign a matter for mediation or other means of alternative dispute resolution.

(3) Hearing officers

(A) In general

The Office of Hearings and Appeals shall appoint Hearing Officers to carry out the duties described in paragraph (1)(A)(i).

(B) Conditions of employment

A Hearing Officer appointed under this paragraph—

- (i) shall serve in the excepted service as an employee of the Administration under section 2103 of title 5 and under the supervision of the Chief Hearing Officer;
- (ii) shall be classified at a position to which section 5376 of title 5 applies; and
- (iii) shall be compensated at a rate not exceeding the maximum rate payable under such section.

(C) Authority; powers

Notwithstanding section 556(b) of title 5—

- (i) a Hearing Officer may hear cases arising under section 554 of such title;
- (ii) a Hearing Officer shall have the powers described in section 556(c) of such title; and
- (iii) the relevant provisions of subchapter II of chapter 5 of such title (except for section 556(b) of such title) shall apply to such Hearing Officer.

(D) Treatment of current personnel

An individual serving as a Judge in the Office of Hearings and Appeals (as that position and office are designated in section 134.101 of title 13, Code of Federal Regulations) on the effective date of this subsection shall be considered as qualified to be, and redesignated as, a Hearing Officer.

(4) Determinations regarding status of concerns

(A) In general

Not later than 2 days after the date on which a final determination that a business concern does not meet the requirements of the status such concern claims to hold is made, such concern or the Administrator, as applicable, shall update the status of such concern in the System for Award Management (or any successor system).

(B) Administrator updates

If such concern fails to update the status of such concern as described in subparagraph (A), not later than 2 days after such failure the Administrator shall make such update.

(C) Notification

A concern required to make an update described under subparagraph (A) shall notify a contracting officer for each contract with respect to which such concern has an offer or bid pending of the determination made under subparagraph (A), if the concern finds, in good faith, that such determination affects the eligibility of the concern to perform such a contract.

(5) Hearing Officer defined

In this subsection, the term "Hearing Officer" means an individual appointed or redesignated under this subsection who is an attorney licensed by a State, commonwealth, territory or possession of the United States, or the District of Columbia.

(Pub. L. 85-536, §2[5], July 18, 1958, 72 Stat. 385; Pub. L. 87-305, §4, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87-367, title I, §103(3), Oct. 4, 1961, 75 Stat. 787; Pub. L. 92-310, title II, §224(a), June 6, 1972, 86 Stat. 206; Pub. L. 93-386, §§3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749; Pub. L. 94-305, title II, §208, June 4, 1976, 90 Stat. 671; Pub. L. 95-89, title III, §303, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-510, §103, Oct. 24, 1978, 92 Stat. 1781; Pub. L. 96-302, title I, §114, July 2, 1980, 94 Stat. 838; Pub. L. 98-352, §2, July 10, 1984, 98 Stat. 329; Pub. L. 100-590, title I, §113, Nov. 3, 1988, 102 Stat. 2997; Pub. L. 102-140, title VI, §609(a), Oct. 28, 1991, 105 Stat. 825; Pub. L. 102-564, title III, §307(d), Oct. 28, 1992, 106 Stat. 4264; Pub. L. 103-81, §3(a), Aug. 13, 1993, 107 Stat. 780; Pub. L. 103-282, §2, July 22, 1994, 108 Stat. 1422; Pub. L. 103-403, title VI, §602, Oct. 22, 1994, 108 Stat. 4202; Pub. L. 104-36, §4(b), Oct. 12, 1995, 109 Stat. 297; Pub. L. 104-208, div. D, title I, §103(e), title II, §§205(a), 208(i)(1), Sept. 30, 1996, 110 Stat. 3009-727, 3009-738, 3009-747; Pub. L. 106-554, §1(a)(9) [title II, §209], Dec. 21, 2000, 114 Stat. 2763, 2763A-683; Pub. L. 108-306, §3, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108-447, div. K, title I, §131, Dec. 8, 2004, 118 Stat. 3452; Pub. L. 111-240, title I, §1117, Sept. 27, 2010, 124 Stat. 2509; Pub. L. 114-92, div. A, title VIII, §869(a)(1), Nov. 25, 2015, 129 Stat. 936; Pub. L. 114-328, div. A, title XVIII, §1833(a), Dec. 23, 2016, 130 Stat. 2661; Pub. L. 115-232, div. A, title VIII, §862(b)(2), Aug. 13, 2018, 132 Stat. 1898; Pub. L. 117-81, div. A, title VIII, §863, Dec. 27, 2021, 135 Stat. 1852.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsecs. (b)(12)(C), (D) and (i)(1)(B)(i), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. Title III of the Act is classified generally to subchapter III (§681 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Subsection (h)(2) of this section, referred to in subsec. (g)(4)(A), was redesignated subsec. (h)(1)(B) by Pub. L. 104-208, div. D, title II, §205(a)(1), (2), Sept. 30, 1996, 110 Stat. 3009-738.

The effective date of this subsection, referred to in subsec. (i)(3)(D), probably means the date of enactment of Pub. L. 114-92, which added subsec. (i) and which was approved Nov. 25, 2015.

CODIFICATION

In subsec. (b)(4), "Section 6101 of title 41" substituted for "Section 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5)" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(8), "subchapter I of chapter 57 of title 5" substituted for "the Travel Expense Act of 1949" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (c), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5)" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d), "Section 3324(a) and (b) of title 31" substituted for "Section 3648 of the Revised Statutes (31 U.S.C. 529)" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Prior similar provisions were contained in section 205 of act July 30, 1953, ch. 282, title II, 67 Stat. 234, as amended by act Aug. 9, 1955, ch. 628, §4, 69 Stat. 547, which was classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2021—Subsec. (i)(4), (5). Pub. L. 117-81 added par. (4) and redesignated former par. (4) as (5).

2018—Subsec. (b)(7). Pub. L. 115-232 inserted ", including loans guaranteed under paragraph (15) or (35) of section 636(a) of this title" after "deferred participation loans".

2016—Subsec. (i)(1)(B). Pub. L. 114-328 amended subpar. (B) generally. Prior to amendment, text read as follows: "The Office of Hearings and Appeals shall only hear appeals of matters as described in this chapter, the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), and title 13 of the Code of Federal Regulations."

2015—Subsec. (i). Pub. L. 114-92 added subsec. (i).

2010—Subsec. (g)(6). Pub. L. 111-240 added par. (6).

2004—Subsec. (b)(14). Pub. L. 108-447 added par. (14).

Subsec. (g)(4)(C). Pub. L. 108-306, §3(1), added subpar. (C).

Subsec. (h)(2), (3). Pub. L. 108-306, §3(2), added par. (2) and redesignated former par. (2) as (3).

2000—Subsec. (f)(1)(C). Pub. L. 106-554 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "each loan shall have been fully disbursed to the borrower prior to any sale."

1996—Subsec. (b)(7). Pub. L. 104-208, §208(i)(1), substituted ": *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation" for ": *Provided*, That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and creditworthiness, and loan monitoring, collection and liquidation".

Subsec. (f)(3). Pub. L. 104-208, §103(e), inserted at end "Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program."

Subsec. (h). Pub. L. 104-208, §205(a), designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted "(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;" for "(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;" and added par. (2).

1995—Subsec. (g)(4)(A). Pub. L. 104-36 substituted first sentence for former first sentence which read as follows: "The Administration may collect the following fees for loan guarantees sold into the secondary

market pursuant to the provisions of subsection (f) of this section: an amount equal to (A) not more than 4/10 of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan guaranteed by the Administration.", and substituted "such fee" for "such fees" in two places in second sentence.

1994—Subsec. (b)(8). Pub. L. 103–282 inserted ": *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities" before semicolon at end.

Subsec. (b)(12), (13). Pub. L. 103–403 added pars. (12) and (13).

1993—Subsec. (g)(4). Pub. L. 103–81 added par. (4) and struck out former par. (4) which read as follows: "The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section."

1992—Subsec. (f)(4). Pub. L. 102–564 substituted "section 636(a)(6)(C) of this title or subsection (e) of this section" for "subsection (e) of this section or section 636(a)(6) or 636(a)(8) of this title".

1991—Subsec. (g)(1). Pub. L. 102–140 substituted "or under section 696 of this title" for "except separate trust certificates shall be issued for loans approved under section 636(a)(13) of this title".

1988—Subsec. (g)(1). Pub. L. 100–590 substituted "except separate trust certificates shall be issued for loans approved" for "except those".

1984—Subsecs. (f) to (h). Pub. L. 98–352 added subsecs. (f) to (h).

1980—Subsec. (b)(7). Pub. L. 96–302 prohibited an interpretation that authorized the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but sanctioned, with respect to deferred participation loans, authority for participating lending institutions to take action on behalf of the Administrator determining eligibility and creditworthiness, loan monitoring, collection, and liquidation, etc.

1978—Subsec. (c). Pub. L. 95–510 substituted "Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of Title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5" for "Any individual so employed may be compensated at a rate not in excess of \$50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses".

1977—Subsec. (e). Pub. L. 95–89 added subsec. (e).

1976—Subsec. (e). Pub. L. 94–305 struck out subsec. (e) which provided for the appointment, by the Administrator, of the Chief Counsel for Advocacy who would serve as a focal point for complaints and suggestions, counsel small businessmen, develop proposals for change, represent interest of small businesses before federal agencies and enlist the cooperation of public and private agencies. See sections 634a to 634g of this title.

1974—Subsec. (b)(10), (11). Pub. L. 93–386, §3(1), added pars. (10) and (11).

Subsec. (e). Pub. L. 93–386, §10, added subsec. (e).

1972—Subsec. (a). Pub. L. 92–310 struck out provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

1961—Subsec. (a). Pub. L. 87–367 struck out authorization for fifteen additional positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949.

Subsec. (d). Pub. L. 87–305 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 103 and 205 of Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Pub. L. 104–208, div. D, title II, §208(j), Sept. 30, 1996, 110 Stat. 3009–747, provided that: "This section [amending this section, sections 80a–18, 662, 681 to 683, 687, 687b, 687d, 687k to 687m, and 697f of this title, and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under sections 681 and 683 of this title, and amending provisions set out as a note under section 631 of this title] and the amendments made by this section shall become effective on the date of enactment of this Act [Sept. 30, 1996]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–36, §8, Oct. 12, 1995, 109 Stat. 297, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1995 Amendment note set out under section 631 of this title] do not apply with respect to any loan made or guaranteed under the Small Business Act [15 U.S.C. 631 et seq.] or the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] before the date of enactment of this Act [Oct. 12, 1995].

"(b) EXCEPTIONS.—The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act [Oct. 12, 1995], if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–81, §3(b), Aug. 13, 1993, 107 Stat. 781, provided that: "Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) [amending this section] shall be applicable only to loans initially sold in the secondary market pursuant to the provisions of section 5(f) of the Small Business Act [subsec. (f) of this section] after August 31, 1993."

Pub. L. 103–81, §7, Aug. 13, 1993, 107 Stat. 782, which provided that sections 3 and 5 of Pub. L. 103–81, amending this section and section 636 of this title and enacting provisions set out as notes under this section and section 636 of this title, were repealed on Sept. 30, 1996, was repealed by Pub. L. 104–208, div. D, title I, §109(a), Sept. 30, 1996, 110 Stat. 3009–733, effective Sept. 29, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–510, §105, Oct. 24, 1978, 92 Stat. 1782, provided that: "This Act [amending this section and sections 636 and 637 of this title and repealing sections 5031, 5032, and 5083 of Title 42, The Public Health and Welfare] shall be effective October 1, 1979."

REGULATIONS

Pub. L. 98–352, §3, July 10, 1984, 98 Stat. 331, provided that:

"(a) Within ninety days after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act [15 U.S.C. 634(h)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

"(b) Within nine months after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under sections 631 and 634 of this title] other than as provided for in subsection (a).

"(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended [15 U.S.C. 634(g)], until final rules and regulations become effective."

AUTHORITY FOR THE OFFICE OF HEARINGS AND APPEALS TO DECIDE APPEALS RELATING TO QUALIFIED HUBZONE SMALL BUSINESS CONCERNS

Pub. L. 117–81, div. A, title VIII, §864, Dec. 27, 2021, 135 Stat. 1852, provided that: "Not later than 1 year after the date of the enactment of this Act [Dec. 27, 2021], the Administrator of the Small Business Administration shall issue a rule authorizing the Office of Hearings and Appeals of the Administration to decide all appeals from formal protest determinations in connection with the status of a concern as a qualified HUBZone small business concern (as such term is defined in section 31(b) of the Small Business Act (15 U.S.C. 657a(b))[])."

ASSET SALES

Pub. L. 105–135, title V, §505, Dec. 2, 1997, 111 Stat. 2624, provided that: "In connection with the Administration's implementation of a program to sell to the private sector loans and other assets held by the Administration, the Administration shall provide to the Committees a copy of the draft and final plans

describing the sale and the anticipated benefits resulting from such sale."

PREFERRED LENDER STANDARD REVIEW PROGRAM

Pub. L. 104–208, div. D, title I, §103(h), Sept. 30, 1996, 110 Stat. 3009–728, provided that: "Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administrator shall commence a standard review program for the Preferred Lender Program established by section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)), which shall include annual or more frequent assessments of the participation of the lender in the program, including defaults, loans, and recoveries of loans made by that lender under the authority of this section. The Administrator shall require such standard review for each new entrant to the Preferred Lender Program."

STUDY AND REPORT REGARDING 1993 AMENDMENTS TO IMPOSE SECONDARY MARKET FEES AND TO REDUCE LOAN GUARANTEE PERCENTAGES

Pub. L. 103–81, §6, Aug. 13, 1993, 107 Stat. 782, provided that: "The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [amending this section and section 636 of this title] on the ability of small business concerns and small business concerns owned and controlled by minorities and women, to obtain financing and the impact of such sections on the effectiveness, viability and growth of the secondary market authorized by section 5(f) of the Small Business Act [subsec. (f) of this section]. Not later than 16 months after the date of enactment [Aug. 13, 1993], and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a report containing the Administration's findings and recommendations on such impact, specifically including changes in the interest rates on financings provided to small business concerns and small business concerns owned and controlled by minorities and women, through the use of the secondary market. The Administration shall segregate such findings and recommendations in the study according to the ethnic and gender components in these categories. Solely for the purposes of the study authorized herein, the term 'small business concerns owned and controlled by minorities', includes businesses owned and controlled by individuals belonging to one of the designated groups listed in section 8(d)(3)(C) of the Small Business Act [15 U.S.C. 637(d)(3)(C)]."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

VIABILITY OF SECONDARY MARKETS

Pub. L. 102–366, title II, §226, Sept. 4, 1992, 106 Stat. 1001, provided that: "The Administrator of the Small Business Administration is authorized and directed to take such actions in the awarding of contracts as is deemed necessary to assure the continued long-term viability of the secondary markets in loans, debentures or other securities guaranteed by the Administration."

SMALL BUSINESS LOAN SECONDARY MARKET STUDY

Pub. L. 102–366, title III, §311, Sept. 4, 1992, 106 Stat. 1005, directed Secretary of the Treasury, Director of Congressional Budget Office, and Chairman of Securities and Exchange Commission, in consultation with Administrator of Small Business Administration, to conduct a study of potential benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for loans to small businesses, specified considerations to be included in the study, and required that, not later than 1 year after Sept. 4, 1992, a report be submitted to Congress on results of the study, including recommendations for legislation to facilitate development of a secondary market for loans to small businesses.

APPROPRIATIONS NOT AUTHORIZED

Pub. L. 98–352, §6, July 10, 1984, 98 Stat. 332, provided that: "This Act [amending this section and sections 633 and 639 of this title and enacting provisions set out as notes under this section and section 631 of this title] does not authorize the appropriation of any funds."

SMALL BUSINESS PROTECTION

Pub. L. 90–104, title III, §§301–303, Oct. 11, 1967, 81 Stat. 272, authorized Administrator of Small Business Administration to conduct a special study of impact on small business concerns of robbery, burglary,

shoplifting, vandalism, and other criminal activities, and report to President and to Congress results of study, including such recommendations he deemed appropriate for administrative and legislative action, within one year after Oct. 11, 1967.

¹ [See References in Text note below.](#)

§634a. Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy

There is established within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(Pub. L. 94-305, title II, §201, June 4, 1976, 90 Stat. 668.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§634b. Primary functions of Office of Advocacy

The primary functions of the Office of Advocacy shall be to—

(1) examine the role of small business in the American economy and the contribution which small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

(2) assess the effectiveness of existing Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such existing programs and increasing the emphasis on general assistance programs designed to benefit all small businesses;

(3) measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses;

(4) determine the impact of the tax structure on small businesses and make legislative and other proposals for altering the tax structure to enable all small businesses to realize their potential for contributing to the improvement of the Nation's economic well-being;

(5) study the ability of financial markets and institutions to meet small business credit needs and determine the impact of government demands for credit on small businesses;

(6) determine financial resource availability and to recommend methods for delivery of financial assistance to minority enterprises, including methods for securing equity capital, for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and training, and for assistance in complying with Federal, State, and local law;

(7) evaluate the efforts of Federal agencies, business and industry to assist minority enterprises;

(8) make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small business enterprises;

(9) recommend specific measures for creating an environment in which all businesses will have the opportunity to complete ¹ effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

(10) determine the desirability of developing a set of rational, objective criteria to be used to

define small business, and to develop such criteria, if appropriate;

(11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5; and

(12) evaluate the efforts of each department and agency of the United States, and of private industry, to assist small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by serviced-disabled ² veterans, as defined in such section 632(q) of this title, and to provide statistical information on the utilization of such programs by such small business concerns, and to make appropriate recommendations to the Administrator of the Small Business Administration and to the Congress in order to promote the establishment and growth of those small business concerns.

(Pub. L. 94–305, title II, §202, June 4, 1976, 90 Stat. 668; Pub. L. 96–481, title II, §203(b), Oct. 21, 1980, 94 Stat. 2327; Pub. L. 106–50, title VII, §702, Aug. 17, 1999, 113 Stat. 250.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1999—Par. (12). Pub. L. 106–50 added par. (12).

1980—Par. (11). Pub. L. 96–481 added par. (11).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after Oct. 1, 1981, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 504 of Title 5, Government Organization and Employees.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104–52, set out as a note preceding section 591 of Title 5, Government Organization and Employees.

ADVOCACY STUDY OF PAPERWORK AND TAX IMPACT

Pub. L. 103–403, title VI, §613, Oct. 22, 1994, 108 Stat. 4205, directed Chief Counsel for Advocacy of the Small Business Administration to conduct a study of the impact of all Federal regulatory, paperwork, and tax requirements upon small business, and report its findings to Congress not later than 1 year after Oct. 22, 1994.

¹ *So in original. Probably should be "compete".*

² *So in original.*

§634c. Additional duties of Office of Advocacy

(a) In general

The Office of Advocacy shall also perform the following duties on a continuing basis:

(1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;

(2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;

(3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of the Small Business Act and communicate such proposals to the appropriate Federal agencies;

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business;

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services; and

(6) carry out the responsibilities of the Office of Advocacy under chapter 6 of title 5.

(b) Outreach and input from small businesses on trade promotion authority

(1) Definitions

In this subsection—

(A) the term "agency" has the meaning given the term in section 551 of title 5;

(B) the term "Chief Counsel for Advocacy" means the Chief Counsel for Advocacy of the Small Business Administration;

(C) the term "covered trade agreement" means a trade agreement being negotiated pursuant to section 4202(b) of title 19; and

(D) the term "Working Group" means the Interagency Working Group convened under paragraph (2)(A).

(2) Working group

(A) In general

Not later than 30 days after the date on which the President submits the notification required under section 4204(a) of title 19, the Chief Counsel for Advocacy shall convene an Interagency Working Group, which shall consist of an employee from each of the following agencies, as selected by the head of the agency or an official delegated by the head of the agency:

(i) The Office of the United States Trade Representative.

(ii) The Department of Commerce.

(iii) The Department of Agriculture.

(iv) Any other agency that the Chief Counsel for Advocacy, in consultation with the United States Trade Representative, determines to be relevant with respect to the subject of the covered trade agreement.

(B) Views of small businesses

Not later than 30 days after the date on which the Chief Counsel for Advocacy convenes the Working Group under subparagraph (A), the Chief Counsel for Advocacy shall identify a diverse group of small businesses, representatives of small businesses, or a combination thereof, to provide to the Working Group the views of small businesses in the manufacturing, services, and agriculture industries on the potential economic effects of the covered trade agreement.

(3) Report

(A) In general

Not later than 180 days after the date on which the Chief Counsel for Advocacy convenes the Working Group under paragraph (2)(A), the Chief Counsel for Advocacy shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Finance of the Senate and the Committee on Small Business and the Committee on Ways and Means of the House of Representatives a report on the economic impacts of the covered trade agreement on small businesses, which shall—

(i) identify the most important priorities, opportunities, and challenges to various industries from the covered trade agreement;

(ii) assess the impact for new small businesses to start exporting, or increase their exports, to markets in countries that are parties to the covered trade agreement;

(iii) analyze the competitive position of industries likely to be significantly affected by the covered trade agreement;

(iv) identify—

(I) any State-owned enterprises in each country participating in negotiations for the covered trade agreement that could pose a threat to small businesses; and

(II) any steps to take to create a level playing field for those small businesses;

(v) identify any rule of an agency that should be modified to become compliant with the covered trade agreement; and

(vi) include an overview of the methodology used to develop the report, including the number of small business participants by industry, how those small businesses were selected, and any other factors that the Chief Counsel for Advocacy may determine appropriate.

(B) Delayed submission

To ensure that negotiations for the covered trade agreement are not disrupted, the President may require that the Chief Counsel for Advocacy delay submission of the report under subparagraph (A) until after the negotiations for the covered trade agreement are concluded, provided that the delay allows the Chief Counsel for Advocacy to submit the report to Congress not later than 45 days before the Senate or the House of Representatives acts to approve or disapprove the covered trade agreement.

(C) Avoidance of duplication

The Chief Counsel for Advocacy shall, to the extent practicable, coordinate the submission of the report under this paragraph with the United States International Trade Commission, the United States Trade Representative, other agencies, and trade advisory committees to avoid unnecessary duplication of reporting requirements.

(Pub. L. 94–305, title II, §203, June 4, 1976, 90 Stat. 669; Pub. L. 111–240, title I, §1602(a), Sept. 27, 2010, 124 Stat. 2551; Pub. L. 114–125, title V, §502, Feb. 24, 2016, 130 Stat. 172.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (a)(3), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2016—Pub. L. 114–125 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2010—Par. (6). Pub. L. 111–240 added par. (6).

EXECUTIVE DOCUMENTS

DELEGATION OF AUTHORITY UNDER 15 U.S.C. 634C(B)(3)(B)

Memorandum of President of the United States, Oct. 9, 2020, 85 F.R. 65631, provided:

Memorandum for the United States Trade Representative

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the United States Trade Representative the authority vested in the President by section 634c(b)(3)(B) of title 15, United States Code.

You are authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§634d. Staff and powers of Office of Advocacy

In carrying out the provisions of sections 634a to 634g of this title, the Chief Counsel for Advocacy may—

(1) employ and fix the compensation of such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the lowest rate for GS–15 of the General Schedule: *Provided, however*, That not more than 14 staff personnel at any one time may be employed and compensated at a rate not in excess of GS–15, step 10, of the General Schedule;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5;

(3) consult with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest;

(4) utilize the services of the National Advisory Council established pursuant to the provisions of section 637(b)(13) of this title and in accordance with the provisions of such statute, also appoint such other advisory boards or committees as is reasonably appropriate and necessary to carry out the provisions of sections 634a to 634g of this title; and

(5) hold hearings and sit and act at such times and places as he may deem advisable.

(Pub. L. 94–305, title II, §204, June 4, 1976, 90 Stat. 669; Pub. L. 96–302, title IV, §402, July 2, 1980, 94 Stat. 850; Pub. L. 103–403, title VI, §§605(b), 610, Oct. 22, 1994, 108 Stat. 4203, 4204.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Schedule, referred to in par. (1), is set out under section 5332 of Title 5.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103–403, §§605(b), 610(1), in introductory provisions substituted "provisions of sections 634a to 634g of this title, the Chief" for "provisions of section 634b of this title, after consultation with and subject to the approval of the Administrator, the Chief".

Par. (1). Pub. L. 103–403, §610(2), substituted "14" for "ten" before "staff personnel".

1980—Par. (1). Pub. L. 96–302 authorized employment at any one time of ten staff personnel at rate of compensation not in excess of GS–15, step 10, of the General Schedule.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

§634e. Assistance of Government agencies

Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under sections 634a to 634g of this title.

(Pub. L. 94–305, title II, §205, June 4, 1976, 90 Stat. 670.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§634f. Reports

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after June 4, 1976, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 634b of this title, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after June 4, 1976, he shall prepare and transmit a preliminary report on his activities. The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.

(Pub. L. 94–305, title II, §206, June 4, 1976, 90 Stat. 670.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§634g. Budgetary line item and authorization of appropriations

(a) Appropriation requests

Each budget of the United States Government submitted by the President under section 1105 of title 31 shall include a separate statement of the amount of appropriations requested for the Office of Advocacy of the Small Business Administration, which shall be designated in a separate account in the General Fund of the Treasury.

(b) Administrative operations

The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations, together with such equipment, operating budget, and communications facilities and services as may be necessary, and shall provide necessary maintenance services for such offices and the equipment and facilities located in such offices.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out sections 634a to 634g of this title. Any amount appropriated under this subsection shall remain available, without fiscal year limitation, until expended.

(Pub. L. 94–305, title II, §207, as added Pub. L. 111–240, title I, §1602(b), Sept. 27, 2010, 124 Stat. 2551.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 634g, Pub. L. 94–305, title II, §207, June 4, 1976, 90 Stat. 671, related to authorization of appropriations, prior to repeal by Pub. L. 111–240, title I, §1602(b), Sept. 27, 2010, 124 Stat. 2551.

§635. Deposit of moneys; depositaries, custodians, and fiscal agents; contributions to employees' compensation funds

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

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 633(c) of this title. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(Pub. L. 85–536, §2[6], July 18, 1958, 72 Stat. 387.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior similar provisions were contained in section 206 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, which was previously classified to this section. See Codification note set out under section 631 of this title.

§636. Additional powers

(a) Loans to small business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—

(i) **IN GENERAL.**—The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain 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.

(ii) **LIQUIDITY.**—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the lender determines that the borrower is unable to obtain credit elsewhere solely because the liquidity of the lender depends upon the guaranteed portion of

the loan being sold on the secondary market.

(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(C) LENDING LIMITS OF LENDERS.—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose for requesting the guarantee is to allow the lender to exceed the legal lending limit of the lender.

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), (E), and (F), 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) EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.
- (iii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term "Preferred Lenders Program" means any program established by the Administrator, as authorized under the proviso in section 634(b)(7) of this title, under which a written agreement between the lender and the Administration delegates to the lender—
 - (I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and
 - (II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—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 be 90 percent.

(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

(F) PARTICIPATION IN THE PAYCHECK PROTECTION PROGRAM.—In an agreement

to participate in a loan on a deferred basis under paragraph (36), the participation by the Administration shall be 100 percent.

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

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this chapter would exceed \$3,750,000 (or if the gross loan amount would exceed \$5,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed \$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000 may be used for working capital, supplies, or financings under paragraph (14) for export purposes; and

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

(4) INTEREST RATES AND PREPAYMENT CHARGES.—

(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided*, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

(B) PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(iii) APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C) PREPAYMENT CHARGES

(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

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

(II) the prepayment is voluntary;

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

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

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause

(i) shall be—

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

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

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

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however, That—*

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining "sound value" shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further, That* such status need not be as sound as that required for general loans under this subsection; and ¹

(C) Repealed. Pub. L. 97-35, title XIX, §1910, Aug. 13, 1981, 95 Stat. 778.

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further, That* any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

(7)(A) IN GENERAL.—The Administrator may defer payments on the principal and interest of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

(B) DEFERRAL REQUIREMENTS.—With respect to a deferral provided under this paragraph, the Administrator may allow lenders under this subsection—

(i) to provide full payment deferment relief (including payment of principal and interest) for a period of not more than 1 year; and

(ii) to provide an additional deferment period if the borrower provides documentation justifying such additional deferment.

(C) SECONDARY MARKET.—

(i) IN GENERAL.—Except as provided in clause (ii), if an investor declines to approve a deferral or additional deferment requested by a lender under subparagraph (B), the Administrator shall exercise the authority to purchase the loan so that the borrower may receive full payment deferment relief (including payment of principal and interest) or an additional deferment as described in subparagraph (B).

(ii) EXCEPTION.—If, in a fiscal year, the Administrator determines that the cost of implementing clause (i) is greater than zero, the Administrator shall not implement that clause.

(8) The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38).

(9) The Administration may provide loans under this subsection to finance residential or

commercial construction or rehabilitation for sale: *Provided, however,* That such loans shall not be used primarily for the acquisition of land.

(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 631(c)² of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

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

(b)³ The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958 [15 U.S.C. 694–1]. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than \$1,000,000.

(13) The Administration may provide financings under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.].

(14) 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. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(B) TERMS.—

(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

(ii) FEES.—

(I) IN GENERAL.—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.

(C) CONSIDERATIONS.—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.

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

(15)(A) The Administration may guarantee loans under this subsection—

(i) to qualified employee trusts with respect to a small business concern for the purpose of purchasing, and for any transaction costs associated with 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; and

(ii) to a small business concern under a plan approved by the Administrator, if the proceeds from the loan are only used to make a loan to a qualified employee trust, and for any transaction

costs associated with making that loan, that results in the qualified employee trust owning at least 51 percent of the small business concern.

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

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of title 26), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

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

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

(iv) with respect to a loan made to a trust, or to a cooperative in accordance with paragraph (35)—

(I) a seller of the small business concern may remain involved as an officer, director, or key employee of the small business concern when a qualified employee trust or cooperative has acquired 100 percent of ownership of the small business concern; and

(II) any seller of the small business concern who remains as an owner of the small business concern, regardless of the percentage of ownership interest, shall be required to provide a personal guarantee by the Administration.

(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, which shall include—

(i) the total number of loans made to employee-owned business concerns that were guaranteed by the Administrator under this subsection or section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), including the number of loans made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives;

(ii) the total number of financings made to employee-owned business concerns by companies licensed under section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 696(c)) [15 U.S.C. 681(c)], including the number of financings made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives; and

(iii) any outreach and educational activities conducted by the Administration with respect to employee-owned business concerns.

(F) A small business concern that makes a loan to a qualified employee trust under subparagraph (A)(ii) is not required to contain the same terms and conditions as the loan made to

the small business concern that is guaranteed by the Administration under such subparagraph.

(G) With respect to a loan made to a qualified employee trust under this paragraph, or to a cooperative in accordance with paragraph (35), the Administrator may, as deemed appropriate, elect to not require any mandatory equity to be provided by the qualified employee trust or cooperative to make the loan.

(16) INTERNATIONAL TRADE.—

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

(i) 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;

(ii) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this subsection; or

(iii) by providing working capital.

(B) SECURITY.—

(i) IN GENERAL.—Except as provided in clause (ii), each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(ii) EXCEPTION.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

(i) is confronting increased competition with foreign firms in the relevant market; and

(ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974 [19 U.S.C. 2341 et seq.].

(F) LIST OF EXPORT FINANCE LENDERS.—

(i) PUBLICATION OF LIST REQUIRED.—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

(I) this paragraph;

(II) paragraph (14); or

(III) paragraph (34).

(ii) AVAILABILITY OF LIST.—The Administrator shall—

(I) post the list published under clause (i) on the website of the Administration; and

(II) make the list published under clause (i) available, upon request, at each district office of the Administration.

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

(18) GUARANTEE FEES.—

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

(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.

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

(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 634(b)(7) of this title, the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of \$50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) AUTHORITY TO LIQUIDATE LOANS.—

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

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

(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 637(a) of this title. Such assistance may be provided only if the Administration determines that—

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

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

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in

the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

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

(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

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

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

(iii) the term of which is not more than twenty-five years; and

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

(21)(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

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

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

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

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

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

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

(D) For purposes of this paragraph a qualified individual is—

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

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

(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department

of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

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

(i) have the greatest potential for—

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

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

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

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

(23) **YEARLY FEE.**—

(A) **IN GENERAL.**—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term "cost" has the meaning given that term in section 661a of title 2.

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

(C) **LOWERING OF BORROWER FEES.**—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on December 8, 2004.

(24) **NOTIFICATION REQUIREMENT.**—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

(25) **LIMITATION ON CONDUCTING PILOT PROJECTS.**—

(A) **IN GENERAL.**—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) **"PILOT PROGRAM" DEFINED.**—In this paragraph, the term 'pilot program' means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C) **LOW DOCUMENTATION LOAN PROGRAM.**—The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after September

30, 1996, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing loans under this chapter.

(27) Repealed. Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16.

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

(29) REAL ESTATE APPRAISALS.—

(A) IN GENERAL.—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—

(i) shall be required by the Administration in connection with any such loan, if such loan is in an amount greater than the Federal banking regulator appraisal threshold; or

(ii) may be required by the Administration or the lender in connection with any such loan, if such loan is in an amount equal to or less than the Federal banking regulator appraisal threshold, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(B) FEDERAL BANKING REGULATOR APPRAISAL THRESHOLD DEFINED.—For purposes of this paragraph, the term "Federal banking regulator appraisal threshold" means the lesser of the threshold amounts set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation for when a federally related transaction that is a commercial real estate transaction requires an appraisal prepared by a State licensed or certified appraiser.

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

(31) EXPRESS LOANS.—

(A) DEFINITIONS.—As used in this paragraph:

(i) The term "disaster area" means the area for which the President has declared a major disaster, during the 5-year period beginning on the date of the declaration.

(ii) The term "express lender" means any lender authorized by the Administration to participate in the Express Loan Program.

(iii) The term "express loan" means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(iv) The term "Express Loan Program" means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guarantee rate of not more than 50 percent.

(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration.

Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$500,000.

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F) EXPRESS LOANS FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term "biomass"—

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;

(BB) trees grown for energy production;

(CC) wood waste and wood residues;

(DD) plants (including aquatic plants and grasses);

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste materials; and

(HH) fats, oils, and greases (including recycled fats, oils, and greases); and

(bb) does not include—

(AA) paper that is commonly recycled; or

(BB) unsegregated solid waste;

(II) the term "energy efficiency project" means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(III) the term "renewable energy system" means a system of energy derived from—

(aa) a wind, solar, biomass (including biodiesel), or geothermal source; or

(bb) hydrogen derived from biomass or water using an energy source described in item (aa).

(ii) LOANS.—The Administrator may make a loan under the Express Loan Program for the purpose of—

(I) purchasing a renewable energy system; or

(II) carrying out an energy efficiency project for a small business concern.

(G) GUARANTEE FEE WAIVER FOR VETERANS.—

(i) GUARANTEE FEE WAIVER.—The Administrator may not collect a guarantee fee described in paragraph (18) in connection with a loan made under this paragraph to a veteran or spouse of a veteran on or after October 1, 2015.

(ii) DEFINITION.—In this subparagraph, the term "veteran or spouse of a veteran" means—

(I) a veteran, as defined in section 632(q)(4) of this title;

(II) an individual who is eligible to participate in the Transition Assistance Program established under section 1144 of title 10;

(III) a member of a reserve component of the Armed Forces named in section 10101 of

title 10;

(IV) the spouse of an individual described in subclause (I), (II), or (III); or

(V) the surviving spouse (as defined in section 101 of title 38) of an individual described in subclause (I), (II), or (III) who died while serving on active duty or as a result of a disability that is service-connected (as defined in such section).

(H) RECOVERY OPPORTUNITY LOANS.—

(i) **IN GENERAL.**—The Administrator may guarantee an express loan to a small business concern located in a disaster area in accordance with this subparagraph.

(ii) **MAXIMUMS.**—For a loan guaranteed under clause (i)—

(I) the maximum loan amount is \$150,000; and

(II) the guarantee rate shall be not more than 85 percent.

(iii) **OVERALL CAP.**—A loan guaranteed under clause (i) shall not be counted in determining the amount of loans made to a borrower for purposes of subparagraph (D).

(iv) **OPERATIONS.**—A small business concern receiving a loan guaranteed under clause (i) shall certify that the small business concern was in operation on the date on which the applicable major disaster occurred as a condition of receiving the loan.

(v) **REPAYMENT ABILITY.**—A loan guaranteed under clause (i) may only be made to a small business concern that demonstrates, to the satisfaction of the Administrator, sufficient capacity to repay the loan.

(vi) **TIMING OF PAYMENT OF GUARANTEES.**—

(I) **IN GENERAL.**—Not later than 90 days after the date on which a request for purchase is filed with the Administrator, the Administrator shall determine whether to pay the guaranteed portion of the loan.

(II) **RECAPTURE.**—Notwithstanding any other provision of law, unless there is a subsequent finding of fraud by a court of competent jurisdiction relating to a loan guaranteed under clause (i), on and after the date that is 6 months after the date on which the Administrator determines to pay the guaranteed portion of the loan, the Administrator may not attempt to recapture the paid guarantee.

(vii) **FEES.**—

(I) **IN GENERAL.**—Unless the Administrator has waived the guarantee fee that would otherwise be collected by the Administrator under paragraph (18) for a loan guaranteed under clause (i), and except as provided in subclause (II), the guarantee fee for the loan shall be equal to the guarantee fee that the Administrator would collect if the guarantee rate for the loan was 50 percent.

(II) **EXCEPTION.**—Subclause (I) shall not apply if the cost of carrying out the program under this subsection in a fiscal year is more than zero and such cost is directly attributable to the cost of guaranteeing loans under clause (i).

(viii) **RULES.**—Not later than 270 days after November 25, 2015, the Administrator shall promulgate rules to carry out this subparagraph.

(32) LOANS FOR ENERGY EFFICIENT TECHNOLOGIES.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "cost" has the meaning given that term in section 661a of title 2;

(ii) the term "covered energy efficiency loan" means a loan—

(I) made under this subsection; and

(II) the proceeds of which are used to purchase energy efficient designs, equipment, or fixtures, or to reduce the energy consumption of the borrower by 10 percent or more; and

(iii) the term "pilot program" means the pilot program established under subparagraph (B)

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for covered energy efficiency loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a covered energy efficiency loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans exceeds that of loans made under this subsection that are not covered energy efficiency loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making covered energy efficiency loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States 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 pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(II) a description of the energy efficiency savings with the pilot program;

(III) a description of the impact of the pilot program on the program under this subsection;

(IV) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(V) recommendations for improving the pilot program.

(33) INCREASED VETERAN PARTICIPATION PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "cost" has the meaning given that term in section 661a of title 2;

(ii) the term "pilot program" means the pilot program established under subparagraph (B); and

(iii) the term "veteran participation loan" means a loan made under this subsection to a small business concern owned and controlled by veterans of the Armed Forces or members of the reserve components of the Armed Forces.

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran participation loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A veteran participation loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a veteran participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran participation loans exceeds that of loans made under this subsection that are not veteran participation loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making veteran participation loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States 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 pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of veteran participation loans for which fees were reduced under the pilot program;

(II) a description of the impact of the pilot program on the program under this subsection;

(III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(IV) recommendations for improving the pilot program.

(34) EXPORT EXPRESS PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "export development activity" includes—

(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

- (II) participation in a trade show that takes place outside the United States;
- (III) translation of product brochures or catalogues for use in markets outside the United States;
- (IV) obtaining a general line of credit for export purposes;
- (V) performing a service contract from buyers located outside the United States;
- (VI) obtaining transaction-specific financing associated with completing export orders;
- (VII) purchasing real estate or equipment to be used in the production of goods or services for export;
- (VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and
- (IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

(ii) the term "express loan" means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

(B) **AUTHORITY.**—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

(C) **LEVEL OF PARTICIPATION.**—

(i) **MAXIMUM AMOUNT.**—The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

(ii) **PERCENTAGE.**—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

(I) 90 percent of a loan that is not more than \$350,000; and

(II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.

(35) **LOANS TO COOPERATIVES.**—

(A) **DEFINITION.**—In this paragraph, the term "cooperative" means an entity that is determined to be a cooperative by the Administrator, in accordance with applicable Federal and State laws and regulation.

(B) **AUTHORITY.**—The Administration shall guarantee loans made to a cooperative for the purpose described in paragraph (15).

(36) **PAYCHECK PROTECTION PROGRAM.**—

(A) **DEFINITIONS.**—In this paragraph—

(i) the terms "appropriate Federal banking agency" and "insured depository institution" have the meanings given those terms in section 1813 of title 12;

(ii) the term "covered loan" means a loan made under this paragraph during the covered period;

(iii) the term "covered period" means the period beginning on February 15, 2020 and ending on June 30, 2021;

(iv) the term "eligible recipient" means an individual or entity that is eligible to receive a covered loan;

(v) the term "eligible self-employed individual" has the meaning given the term in section 7002(b) of the Families First Coronavirus Response Act (Public Law 116–127);

(vi) the term "insured credit union" has the meaning given the term in section 1752 of title 12;

(vii) the term "nonprofit organization" means an organization that is described in section 501(c)(3) of title 26 and that is exempt from taxation under section 501(a) of title 26;

(viii) the term "payroll costs"—

(I) means—

- (aa) the sum of payments of any compensation with respect to employees that is a—
 - (AA) salary, wage, commission, or similar compensation;
 - (BB) payment of cash tip or equivalent;
 - (CC) payment for vacation, parental, family, medical, or sick leave;
 - (DD) allowance for dismissal or separation;
 - (EE) payment required for the provisions of group health care or group life, disability, vision, or dental insurance benefits, including insurance premiums;
 - (FF) payment of any retirement benefit; or
 - (GG) payment of State or local tax assessed on the compensation of employees;
- and

(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred; and

(II) shall not include—

- (aa) the compensation of an individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the compensation is paid or the obligation to pay the compensation is incurred;
- (bb) taxes imposed or withheld under chapters 21, 22, or 24 of title 26 during the applicable period;
- (cc) any compensation of an employee whose principal place of residence is outside of the United States;
- (dd) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or
- (ee) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127);

(ix) the term "veterans organization" means an organization that is described in section 501(c)(19) of title 26 that is exempt from taxation under section 501(a) of title 26;

(x) the term "community development financial institution" has the meaning given the term in section 4702 of title 12); [5](#)

(xi) the term "community financial institutions" means—

- (I) a community development financial institution;
- (II) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note);
- (III) a development company that is certified under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.); and
- (IV) an intermediary, as defined in subsection (m)(11);

(xii) the term "credit union" means a State credit union or a Federal credit union, as those terms are defined, respectively, in section 1752 of title 12;

(xiii) the term "seasonal employer" means an eligible recipient that—

- (I) does not operate for more than 7 months in any calendar year; or
- (II) during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts of the employer for the other 6 months of that year;

(xiv) the term "housing cooperative" means a cooperative housing corporation (as defined in section 216(b) of title 26) that employs not more than 300 employees;

(xv) the term "destination marketing organization" means a nonprofit entity that is—

(I) an organization described in section 501(c) of title 26 and exempt from tax under section 501(a) of such title; or

(II) a State, or a political subdivision of a State (including any instrumentality of such entities)—

(aa) engaged in marketing and promoting communities and facilities to businesses and leisure travelers through a range of activities, including—

(AA) assisting with the location of meeting and convention sites;

(BB) providing travel information on area attractions, lodging accommodations, and restaurants;

(CC) providing maps; and

(DD) organizing group tours of local historical, recreational, and cultural attractions; or

(bb) that is engaged in, and derives the majority of the operating budget of the entity from revenue attributable to, providing live events;

(xvi) the terms "exchange", "issuer", and "security" have the meanings given those terms in section 78c(a) of this title; and

(xvii) the term "additional covered nonprofit entity"—

(I) means an organization described in any paragraph of section 501(c) of title 26, other than paragraph (3), (4), (6), or (19), and exempt from tax under section 501(a) of such title; and

(II) does not include any entity that, if the entity were a business concern, would be described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in paragraph (a) or (k) of such section.

(B) PAYCHECK PROTECTION LOANS.—Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans under the same terms, conditions, and processes as a loan made under this subsection.

(C) REGISTRATION OF LOANS.—Not later than 15 days after the date on which a loan is made under this paragraph, the Administration shall register the loan using the TIN (as defined in section 7701 of title 26) assigned to the borrower.

(D) INCREASED ELIGIBILITY FOR CERTAIN SMALL BUSINESSES AND ORGANIZATIONS.—

(i) IN GENERAL.—During the covered period, in addition to small business concerns, any business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern described in section 657a(b)(2)(C) of this title shall be eligible to receive a covered loan if the business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern employs not more than the greater of—

(I) 500 employees; or

(II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern operates.

(ii) INCLUSION OF SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND ELIGIBLE SELF-EMPLOYED INDIVIDUALS.—

(I) IN GENERAL.—During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

(II) DOCUMENTATION.—An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation

as determined necessary by the Administrator and the Secretary, to establish the applicant as eligible.

(iii) BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—

(I) IN GENERAL.—During the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursement shall be eligible to receive a covered loan.

(II) ELIGIBILITY OF NEWS ORGANIZATIONS.—

(aa) DEFINITION.—In this subclause, the term "included business concern" means a business concern, including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto—

(AA) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern; or

(BB) any nonprofit organization or any organization otherwise subject to section 511(a)(2)(B) of title 26 that is a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))).

(bb) ELIGIBILITY.—During the covered period, an included business concern shall be eligible to receive a covered loan if—

(AA) the included business concern is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151 or, with respect to a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))), has a trade or business that falls under such a code; and

(BB) the included business concern makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the included business concern that produces or distributes locally focused or emergency information.

(III) ELIGIBILITY OF CERTAIN ORGANIZATIONS.—Subject to the provisions in this subparagraph, during the covered period—

(aa) a nonprofit organization shall be eligible to receive a covered loan if the nonprofit organization employs not more than 500 employees per physical location of the organization; and

(bb) an additional covered nonprofit entity and an organization that, but for subclauses (I)(dd) and (II)(dd) of clause (vii), would be eligible for a covered loan under clause (vii) shall be eligible to receive a covered loan if the entity or organization employs not more than 300 employees per physical location of the entity or organization.

(IV) ELIGIBILITY OF INTERNET PUBLISHING ORGANIZATIONS.—A business concern or other organization that was not eligible to receive a covered loan the day before March 11, 2021, is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information shall be eligible to receive a covered loan for the continued provision of news, information, content, or emergency information if—

(aa) the business concern or organization employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry

Classification code, per physical location of the business concern or organization; and
(bb) the business concern or organization makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.

(iv) **WAIVER OF AFFILIATION RULES.**—During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for—

(I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;

(II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration;

(III) any business concern that receives financial assistance from a company licensed under section 681 of this title;

(IV)(aa) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or

(bb) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151; and

(V) any business concern or other organization that was not eligible to receive a covered loan the day before March 11, 2021, is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization—

(aa) employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry Classification code, per physical location of the business concern or organization; and

(bb) is majority owned or controlled by a business concern or organization that is assigned a North American Industry Classification System code of 519130.

(v) **EMPLOYEE.**—For purposes of determining whether a business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 657a(b)(2)(C) of this title employs not more than 500 employees under clause (i)(I), or for purposes of determining the number of employees of a housing cooperative or a business concern or organization made eligible for a loan under this paragraph under subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix), the term "employee" includes individuals employed on a full-time, part-time, or other basis.

(vi) **AFFILIATION.**—The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a nonprofit organization, a business concern or organization made eligible for a loan under this paragraph under clause (vii), a housing cooperative, and a veterans organization in the same manner as with respect to a small business concern.

(vii) **ELIGIBILITY FOR CERTAIN 501(c)(6) ORGANIZATIONS.**—

(I) **IN GENERAL.**—Any organization that is described in section 501(c)(6) of title 26 and that is exempt from taxation under section 501(a) of such title (excluding professional sports leagues and organizations with the purpose of promoting or participating in a

political campaign or other activity) shall be eligible to receive a covered loan if—

(aa) the organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization;

(cc) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and

(dd) the organization employs not more than 300 employees.

(II) DESTINATION MARKETING ORGANIZATIONS.—Any destination marketing organization shall be eligible to receive a covered loan if—

(aa) the destination marketing organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the destination marketing organization do not comprise more than 15 percent of the total activities of the organization;

(cc) the cost of the lobbying activities of the destination marketing organization did not exceed \$1,000,000 during the most recent tax year of the destination marketing organization that ended prior to February 15, 2020; and [6](#)

(dd) the destination marketing organization employs not more than 300 employees; and

(ee) the destination marketing organization—

(AA) is described in section 501(c) of title 26 and is exempt from taxation under section 501(a) of such title; or

(BB) is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities.

(viii) INELIGIBILITY OF PUBLICLY-TRADED ENTITIES.—

(I) IN GENERAL.—Subject to subclause (II), and notwithstanding any other provision of this paragraph, on and after December 27, 2020, an entity that is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 78f of this title, shall be ineligible to receive a covered loan under this paragraph.

(II) RULE FOR AFFILIATED ENTITIES.—With respect to a business concern or organization made eligible by subclause (II) or (IV) of clause (iii) or subclause (IV) or (V) of clause (iv) of this subparagraph, the Administrator shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such business concern or organization, is an issuer.

(ix) ELIGIBILITY OF ADDITIONAL COVERED NONPROFIT ENTITIES.—An additional covered nonprofit entity shall be eligible to receive a covered loan if—

(I) the additional covered nonprofit entity does not receive more than 15 percent of its receipts from lobbying activities;

(II) the lobbying activities of the additional covered nonprofit entity do not comprise more than 15 percent of the total activities of the organization;

(III) the cost of the lobbying activities of the additional covered nonprofit entity did not exceed \$1,000,000 during the most recent tax year of the additional covered nonprofit entity that ended prior to February 15, 2020; and

(IV) the additional covered nonprofit entity employs not more than 300 employees.

(E) MAXIMUM LOAN AMOUNT.—Except as provided in subparagraph (V), during the covered period, with respect to a covered loan, the maximum loan amount shall be the lesser of—

(i)(I) the sum of—

(aa) the product obtained by multiplying—

(AA) the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, except that an applicant that is a seasonal employer shall use the average total monthly payments for payroll for any 12-week period selected by the seasonal employer between February 15, 2019, and February 15, 2020; by

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

(II) if requested by an otherwise eligible recipient that was not in business during the period beginning on February 15, 2019 and ending on June 30, 2019, the sum of—

(aa) the product obtained by multiplying—

(AA) the average total monthly payments by the applicant for payroll costs incurred during the period beginning on January 1, 2020 and ending on February 29, 2020; by

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

(ii) \$10,000,000.

(F) ALLOWABLE USES OF COVERED LOANS.—

(i) IN GENERAL.—During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for—

(I) payroll costs;

(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

(III) employee salaries, commissions, or similar compensations;

(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);

(V) rent (including rent under a lease agreement);

(VI) utilities;

(VII) interest on any other debt obligations that were incurred before the covered period;

(VIII) covered operations expenditures, as defined in section 636m(a) of this title;

(IX) covered property damage costs, as defined in section 636m(a) of this title;

(X) covered supplier costs, as defined in section 636m(a) of this title; and

(XI) covered worker protection expenditures, as defined in section 636m(a) of this title.

(ii) DELEGATED AUTHORITY.—

(I) IN GENERAL.—For purposes of making covered loans for the purposes described in clause (i), a lender approved to make loans under this subsection shall be deemed to have been delegated authority by the Administrator to make and approve covered loans, subject to the provisions of this paragraph.

(II) CONSIDERATIONS.—In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, a lender shall consider whether the borrower—

(aa) was in operation on February 15, 2020; and

(bb)(AA) had employees for whom the borrower paid salaries and payroll taxes; or

(BB) paid independent contractors, as reported on a Form 1099-MISC.

(iii) **ADDITIONAL LENDERS.**—The authority to make loans under this paragraph shall be extended to additional lenders determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.

(iv) **REFINANCE.**—A loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available may be refinanced as part of a covered loan.

(v) **NONRECOURSE.**—Notwithstanding the waiver of the personal guarantee requirement or collateral under subparagraph (J), the Administrator shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under clause (i) or (iv).

(vi) **PROHIBITION.**—None of the proceeds of a covered loan may be used for—

(I) lobbying activities, as defined in section 1602 of title 2;

(II) lobbying expenditures related to a State or local election; or

(III) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

(G) BORROWER REQUIREMENTS.—

(i) **CERTIFICATION.**—An eligible recipient applying for a covered loan shall make a good faith certification—

(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

(H) FEE WAIVER.—With respect to a covered loan—

(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall collect no fee; and

(ii) in lieu of the fee otherwise applicable under paragraph (18)(A), the Administrator shall collect no fee.

(I) **CREDIT ELSEWHERE.**—During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in section 632(h) of this title, shall not apply to a covered loan.

(J) **WAIVER OF PERSONAL GUARANTEE REQUIREMENT.**—With respect to a covered loan—

(i) no personal guarantee shall be required for the covered loan; and

(ii) no collateral shall be required for the covered loan.

(K) **MATURITY FOR LOANS WITH REMAINING BALANCE AFTER APPLICATION OF FORGIVENESS.**—With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under section 636m of this title—

(i) the remaining balance shall continue to be guaranteed by the Administration under this subsection; and

(ii) the covered loan shall have a minimum maturity of 5 years and a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.

(L) INTEREST RATE REQUIREMENTS.—A covered loan shall bear an interest rate not to exceed 4 percent, calculated on a non-compounding, non-adjustable basis.

(M) LOAN DEFERMENT.—

(i) DEFINITION OF IMPACTED BORROWER.—

(I) IN GENERAL.—In this subparagraph, the term "impacted borrower" means an eligible recipient that—

(aa) is in operation on February 15, 2020; and

(bb) has an application for a covered loan that is approved or pending approval on or after March 27, 2020.

(II) PRESUMPTION.—For purposes of this subparagraph, an impacted borrower is presumed to have been adversely impacted by COVID–19.

(ii) DEFERRAL.—The Administrator shall—

(I) consider each eligible recipient that applies for a covered loan to be an impacted borrower; and

(II) require lenders under this subsection to provide complete payment deferment relief for impacted borrowers with covered loans, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 636m of this title is remitted to the lender.

(iii) SECONDARY MARKET.—With respect to a covered loan that is sold on the secondary market, if an investor declines to approve a deferral requested by a lender under clause (ii), the Administrator shall exercise the authority to purchase the loan so that the impacted borrower may receive a deferral, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 636m of this title is remitted to the lender.

(iv) GUIDANCE.—Not later than 30 days after March 27, 2020, the Administrator shall provide guidance to lenders under this paragraph on the deferment process described in this subparagraph.

(v) RULE OF CONSTRUCTION.—If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in section 636m(a) of this title, such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

(N) SECONDARY MARKET SALES.—A covered loan shall be eligible to be sold in the secondary market consistent with this subsection. The Administrator may not collect any fee for any guarantee sold into the secondary market under this subparagraph.

(O) REGULATORY CAPITAL REQUIREMENTS.—

(i) RISK WEIGHT.—With respect to the appropriate Federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements, a covered loan shall receive a risk weight of zero percent.

(ii) TEMPORARY RELIEF FROM TDR DISCLOSURES.—Notwithstanding any other provision of law, an insured depository institution or an insured credit union that modifies a covered loan in relation to COVID–19-related difficulties in a troubled debt restructuring on or after March 13, 2020, shall not be required to comply with the Financial Accounting Standards Board Accounting Standards Codification Subtopic 310–40 ("Receivables – Troubled Debt Restructurings by Creditors") for purposes of compliance with the

requirements of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), until such time and under such circumstances as the appropriate Federal banking agency or the National Credit Union Administration Board, as applicable, determines appropriate.

(P) REIMBURSEMENT FOR PROCESSING.—

(i) IN GENERAL.—The Administrator shall reimburse a lender authorized to make a covered loan as follows:

(I) With respect to a covered loan made during the period beginning on March 27, 2020, and ending on the day before December 27, 2020, the Administrator shall reimburse such a lender at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

- (aa) 5 percent for loans of not more than \$350,000;
- (bb) 3 percent for loans of more than \$350,000 and less than \$2,000,000; and
- (cc) 1 percent for loans of not less than \$2,000,000.

(II) With respect to a covered loan made on or after December 27, 2020, the Administrator shall reimburse such a lender—

(aa) for a covered loan of not more than \$50,000, in an amount equal to the lesser of—

- (AA) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or
- (BB) \$2,500; and

(bb) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

- (AA) 5 percent for a covered loan of more than \$50,000 and not more than \$350,000;
- (BB) 3 percent for a covered loan of more than \$350,000 and less than \$2,000,000; and
- (CC) 1 percent for a covered loan of not less than \$2,000,000.

(ii) FEE LIMITS.—An agent that assists an eligible recipient to prepare an application for a covered loan may not collect a fee in excess of the limits established by the Administrator. If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent.

(iii) TIMING.—A reimbursement described in clause (i) shall be made not later than 5 days after the reported disbursement of the covered loan and may not be required to be repaid by a lender unless the lender is found guilty of an act of fraud in connection with the covered loan.

(iv) SENSE OF THE SENATE.—It is the sense of the Senate that the Administrator should issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 637(d)(3)(C) of this title), women, and businesses in operation for less than 2 years.

(Q) DUPLICATION.—Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under subsection (b)(2) that is for a purpose other than paying payroll costs and other obligations described in subparagraph (F) from receiving assistance under this paragraph.

(R) WAIVER OF PREPAYMENT PENALTY.—Notwithstanding any other provision of

law, there shall be no prepayment penalty for any payment made on a covered loan.

(S) SET-ASIDE FOR INSURED DEPOSITORY INSTITUTIONS, CREDIT UNIONS, AND COMMUNITY FINANCIAL INSTITUTIONS.—

(i) INSURED DEPOSITORY INSTITUTIONS AND CREDIT UNIONS.—In making loan guarantees under this paragraph after April 24, 2020, the Administrator shall guarantee not less than \$30,000,000,000 in loans made by—

(I) insured depository institutions with consolidated assets of not less than \$10,000,000,000 and less than \$50,000,000,000; and

(II) credit unions with consolidated assets of not less than \$10,000,000,000 and less than \$50,000,000,000.

(ii) COMMUNITY FINANCIAL INSTITUTIONS, SMALL INSURED DEPOSITORY INSTITUTIONS, AND CREDIT UNIONS.—In making loan guarantees under this paragraph after April 24, 2020, the Administrator shall guarantee not less than \$30,000,000,000 in loans made by—

(I) community financial institutions;

(II) insured depository institutions with consolidated assets of less than \$10,000,000,000; and

(III) credit unions with consolidated assets of less than \$10,000,000,000.

(T) REQUIREMENT FOR DATE IN OPERATION.—A business or organization that was not in operation on February 15, 2020 shall not be eligible for a loan under this paragraph.

(U) EXCLUSION OF ENTITIES RECEIVING SHUTTERED VENUE OPERATOR GRANTS.—An eligible person or entity (as defined under of ⁴ section 9009a of this title) that receives a grant under such section 9009a shall not be eligible for a loan under this paragraph.

(V) CALCULATION OF MAXIMUM LOAN AMOUNT FOR FARMERS AND RANCHERS.—

(i) DEFINITION.—In this subparagraph, the term "covered recipient" means an eligible recipient that—

(I) operates as a sole proprietorship or as an independent contractor, or is an eligible self-employed individual;

(II) reports farm income or expenses on a Schedule F (or any equivalent successor schedule); and

(III) was in business as of February 15, 2020.

(ii) NO EMPLOYEES .—With respect to ⁸ covered recipient without employees, the maximum covered loan amount shall be the lesser of—

(I) the sum of—

(aa) the product obtained by multiplying—

(AA) the gross income of the covered recipient in 2019, as reported on a Schedule F (or any equivalent successor schedule), that is not more than \$100,000, divided by 12; and

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on April 3, 2020 that the borrower intends to refinance under the covered loan, not including any amount of any advance under the loan that is not required to be repaid; or

(II) \$2,000,000.

(iii) WITH EMPLOYEES.—With respect to a covered recipient with employees, the maximum covered loan amount shall be calculated using the formula described in

subparagraph (E), except that the gross income of the covered recipient described in clause (ii)(I)(aa)(AA) of this subparagraph, as divided by 12, shall be added to the sum calculated under subparagraph (E)(i)(I).

(iv) RECALCULATION.—A lender that made a covered loan to a covered recipient before December 27, 2020 may, at the request of the covered recipient—

(I) recalculate the maximum loan amount applicable to that covered loan based on the formula described in clause (ii) or (iii), as applicable, if doing so would result in a larger covered loan amount; and

(II) provide the covered recipient with additional covered loan amounts based on that recalculation.

(W) FRAUD ENFORCEMENT HARMONIZATION.—Notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a covered loan guaranteed under this paragraph shall be filed not later than 10 years after the offense was committed.

(37) PAYCHECK PROTECTION PROGRAM SECOND DRAW LOANS.—

(A) DEFINITIONS.—In this paragraph—

(i) the terms "additional covered nonprofit entity", "eligible self-employed individual", "housing cooperative", "nonprofit organization", "payroll costs", "seasonal employer", and "veterans organization" have the meanings given those terms in paragraph (36), except that "eligible entity" shall be substituted for "eligible recipient" each place it appears in the definitions of those terms;

(ii) the term "covered loan" means a loan made under this paragraph;

(iii) the terms "covered mortgage obligation", "covered operating expenditure", "covered property damage cost", "covered rent obligation", "covered supplier cost", "covered utility payment", and "covered worker protection expenditure" have the meanings given those terms in section 636m(a) of this title;

(iv) the term "eligible entity"—

(I) means any business concern, nonprofit organization, housing cooperative, veterans organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that—

(aa) employs not more than 300 employees; and

(bb)(AA) except as provided in subitems (BB), (CC), and (DD), had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the same quarter in 2019;

(BB) if the entity was not in business during the first or second quarter of 2019, but was in business during the third and fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the third or fourth quarter of 2019;

(CC) if the entity was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the fourth quarter of 2019; or

(DD) if the entity was not in business during 2019, but was in operation on February 15, 2020, had gross receipts during the second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020;

(II) includes a business concern or organization made eligible for a loan under paragraph (36) under subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix) of subparagraph (D) of paragraph (36) and that meets the requirements described in items (aa) and (bb) of subclause (I); and

(III) does not include—

(aa) any entity that is a type of business concern (or would be, if such entity were a business concern) described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in subsection (a) or (k) of such section; or

(bb) any business concern or entity primarily engaged in political or lobbying activities, which shall include any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents;

(cc) any business concern or entity—

(AA) for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership; or

(BB) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China;

(dd) any person required to submit a registration statement under section 612 of title 22; or

(ee) an eligible person or entity (as defined under section 9009a of this title) that receives a grant under such section 9009a; and

(v) the term "Tribal business concern" means a Tribal business concern described in section 657a(b)(2)(C) of this title.

(B) LOANS.—Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans to eligible entities under the same terms, conditions, and processes as a loan made under paragraph (36).

(C) MAXIMUM LOAN AMOUNT.—

(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the maximum amount of a covered loan made to an eligible entity is the lesser of—

(I) the product obtained by multiplying—

(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

(AA) the 1-year period before the date on which the loan is made; or

(BB) calendar year 2019; by

(bb) 2.5; or

(II) \$2,000,000.

(ii) SEASONAL EMPLOYERS.—The maximum amount of a covered loan made to an eligible entity that is a seasonal employer is the lesser of—

(I) the product obtained by multiplying—

(aa) at the election of the eligible entity, the average total monthly payments for payroll costs incurred or paid by the eligible entity for any 12-week period between

February 15, 2019 and February 15, 2020; by

(bb) 2.5; or

(II) \$2,000,000.

(iii) NEW ENTITIES.—The maximum amount of a covered loan made to an eligible entity that did not exist during the 1-year period preceding February 15, 2020 is the lesser of—

(I) the product obtained by multiplying—

(aa) the quotient obtained by dividing—

(AA) the sum of the total monthly payments by the eligible entity for payroll costs paid or incurred by the eligible entity as of the date on which the eligible entity applies for the covered loan; by

(BB) the number of months in which those payroll costs were paid or incurred; by

(bb) 2.5; or

(II) \$2,000,000.

(iv) NAICS 72 ENTITIES.—The maximum amount of a covered loan made to an eligible entity that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursement is the lesser of—

(I) the product obtained by multiplying—

(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

(AA) the 1-year period before the date on which the loan is made; or

(BB) calendar year 2019; by

(bb) 3.5; or

(II) \$2,000,000.

(D) BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—

(i) IN GENERAL.—For a business concern with more than 1 physical location, the business concern shall be an eligible entity if the business concern would be eligible for a loan under paragraph (36) pursuant to clause (iii) of subparagraph (D) of such paragraph, as applied in accordance with clause (ii) of this subparagraph, and meets the revenue reduction requirements described in item (bb) of subparagraph (A)(iv)(I).

(ii) SIZE LIMIT.—For purposes of applying clause (i), the Administrator shall substitute "not more than 300 employees" for "not more than 500 employees" in paragraph (36)(D)(iii).

(E) WAIVER OF AFFILIATION RULES.—

(i) IN GENERAL.—The waiver described in paragraph (36)(D)(iv) shall apply for purposes of determining eligibility under this paragraph.

(ii) SIZE LIMIT.—For purposes of applying clause (i), the Administrator shall substitute "not more than 300 employees" for "not more than 500 employees" in subclause (I) and (IV) of paragraph (36)(D)(iv).

(F) LOAN NUMBER LIMITATION.—An eligible entity may only receive 1 covered loan.

(G) EXCEPTION FROM CERTAIN CERTIFICATION REQUIREMENTS.—An eligible entity applying for a covered loan shall not be required to make the certification described in clause (iii) or (iv) of paragraph (36)(G).

(H) FEE WAIVER.—With respect to a covered loan—

(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall

collect no fee; and

(ii) in lieu of the fee otherwise applicable under paragraph (18)(A), the Administrator shall collect no fee.

(I) GROSS RECEIPTS AND SIMPLIFIED CERTIFICATION OF REVENUE TEST.—

(i) **LOANS OF UP TO \$150,000.—**For a covered loan of not more than \$150,000, the eligible entity—

(I) may submit a certification attesting that the eligible entity meets the applicable revenue loss requirement under subparagraph (A)(iv)(I)(bb); and

(II) if the eligible entity submits a certification under subclause (I), shall, on or before the date on which the eligible entity submits an application for forgiveness under subparagraph (J), produce adequate documentation that the eligible entity met such revenue loss standard.

(ii) **FOR NONPROFIT AND VETERANS ORGANIZATIONS.—**For purposes of calculating gross receipts under subparagraph (A)(iv)(I)(bb) for an eligible entity that is a nonprofit organization, a veterans organization, or an organization described in subparagraph (A)(iv)(II), gross receipts means gross receipts within the meaning of section 6033 of title 26.

(J) LOAN FORGIVENESS.—

(i) **DEFINITION OF COVERED PERIOD.—**In this subparagraph, the term "covered period" has the meaning given that term in section 636m(a) of this title.

(ii) **FORGIVENESS GENERALLY.—**Except as otherwise provided in this subparagraph, an eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in the same manner as an eligible recipient with respect to a loan made under paragraph (36) of this section, as described in section 636m of this title.

(iii) **FORGIVENESS AMOUNT.—**An eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred or expenditures made during the covered period:

(I) Payroll costs, excluding any payroll costs that are—

(aa) qualified wages, as defined in subsection (c)(3) of section 2301 of the CARES Act (26 U.S.C. 3111 note), taken into account in determining the credit allowed under such section;

(bb) qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020; or

(cc) premiums taken into account in determining the credit allowed under section 6432 of title 26.

(II) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).

(III) Any covered operations expenditure.

(IV) Any covered property damage cost.

(V) Any payment on any covered rent obligation.

(VI) Any covered utility payment.

(VII) Any covered supplier cost.

(VIII) Any covered worker protection expenditure.

(iv) **LIMITATION ON FORGIVENESS FOR ALL ELIGIBLE ENTITIES.—**Subject to any reductions under section 636m(d) of this title, the forgiveness amount under this subparagraph shall be equal to the lesser of—

(I) the amount described in clause (ii); and

(II) the amount equal to the quotient obtained by dividing—

(aa) the amount of the covered loan used for payroll costs during the covered period;
and

(bb) 0.60.

(v) SUBMISSION OF MATERIALS FOR FORGIVENESS.—For purposes of applying subsection (l)(1) of section 636m of this title to a covered loan of not more than \$150,000 under this paragraph, an eligible entity may be required to provide, at the time of the application for forgiveness, documentation required to substantiate revenue loss in accordance with subparagraph (I).

(K) LENDER ELIGIBILITY.—Except as otherwise provided in this paragraph, a lender approved to make loans under paragraph (36) may make covered loans under the same terms and conditions as in paragraph (36).

(L) REIMBURSEMENT FOR LOAN PROCESSING AND SERVICING.—The Administrator shall reimburse a lender authorized to make a covered loan—

(i) for a covered loan of not more than \$50,000, in an amount equal to the lesser of—

(I) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

(II) \$2,500;

(ii) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

(I) 5 percent for a covered loan of more than \$50,000 and not more than \$350,000; and

(II) 3 percent for a covered loan of more than \$350,000.

(M) PUBLICATION OF GUIDANCE.—Not later than 10 days after December 27, 2020, the Administrator shall issue guidance addressing barriers to accessing capital for minority, underserved, veteran, and women-owned business concerns for the purpose of ensuring equitable access to covered loans.

(N) STANDARD OPERATING PROCEDURE.—The Administrator shall, to the maximum extent practicable, allow a lender approved to make covered loans to use existing program guidance and standard operating procedures for loans made under this subsection.

(O) SUPPLEMENTAL COVERED LOANS.—A covered loan under this paragraph may only be made to an eligible entity that—

(i) has received a loan under paragraph (36); and

(ii) on or before the expected date on which the covered loan under this paragraph is disbursed to the eligible entity, has used, or will use, the full amount of the loan received under paragraph (36).

(P) FRAUD ENFORCEMENT HARMONIZATION.—Notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a covered loan guaranteed under this paragraph shall be filed not later than 10 years after the offense was committed.

(b) Disaster loans; authorization, scope, terms and conditions, etc.

Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the 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 of the aggregate costs of such damage or destruction (whether or not

compensated for by insurance or otherwise) 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—

- (i) construction of retaining walls and sea walls;
- (ii) grading and contouring land; and
- (iii) relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters, if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency;

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided*, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amounts shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern, private nonprofit organization, or small agricultural cooperative located in an area affected by a disaster,⁹ (including drought), with respect to both farm-related and nonfarm-related small business concerns, if the Administration determines that the concern, the organization, 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 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 1961 of title 7, in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph;

(C) a disaster, as determined by the Administrator of the Small Business Administration;

(D) an emergency involving Federal primary responsibility determined to exist by the President under the section 5191(b) of title 42; or

(E) if no disaster or emergency declaration has been issued pursuant to subparagraph (A), (B), (C), or (D), the Governor of a State in which a disaster or emergency has occurred may certify to the Small Business Administration that small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster or emergency, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster- or emergency-stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore,¹⁰ and may then make such loans as would have been available under this paragraph if a disaster or emergency 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: *Provided further*, That for purposes of subparagraph (D), the Administrator shall deem that such an emergency affects each State or subdivision thereof (including counties), and that each State or subdivision has sufficient economic damage to small business concerns to qualify for assistance under this paragraph and the Administrator shall accept applications for such assistance immediately.

(3)(A) In this paragraph—

- (i) the term "active service" has the meaning given that term in section 101(d)(3) of title 10;
- (ii) 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; 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 perform active service for a period of more than 30 consecutive days.

(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 service and ending on the date that is 1 year after the date on which such essential employee is discharged or released from active service. The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year.

(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, or have [11](#) become due to changed economic circumstances, 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.

(G)(i) Notwithstanding any other provision of law, the Administrator may make a loan under this paragraph of not more than \$50,000 without collateral.

(ii) The Administrator may defer payment of principal and interest on a loan described in clause (i) during the longer of—

- (I) the 1-year period beginning on the date of the initial disbursement of the loan; and
- (II) the period during which the relevant essential employee is on active service.

(H) The Administrator shall give priority to any application for a loan under this paragraph and shall process and make a determination regarding such applications prior to processing or making a determination on other loan applications under this subsection, on a rolling basis.

(4) COORDINATION WITH FEMA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this subsection or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the

Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall ensure, to the maximum extent practicable, that all application periods for disaster relief under this chapter correspond with application deadlines established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

(B) DEADLINES.—Notwithstanding any other provision of law, not later than 10 days before the closing date of an application period for a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that includes—

- (i) the deadline for submitting applications for assistance under this chapter relating to that major disaster;
- (ii) information regarding the number of loan applications and disbursements processed by the Administrator relating to that major disaster for each day during the period beginning on the date on which that major disaster was declared and ending on the date of that report; and
- (iii) an estimate of the number of potential applicants that have not submitted an application relating to that major disaster.

(5) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this subsection or the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator shall make every effort to communicate through radio, television, print, and web-based outlets, all relevant information needed by disaster loan applicants, including—

- (A) the date of such declaration;
- (B) cities and towns within the area of such declaration;
- (C) loan application deadlines related to such disaster;
- (D) all relevant contact information for victim services available through the Administration (including links to small business development center websites);
- (E) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;
- (F) information on eligibility criteria for Administration loan programs, including where such applications can be found; and
- (G) application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

(6) AUTHORITY FOR QUALIFIED PRIVATE CONTRACTORS.—

(A) DISASTER LOAN PROCESSING.—The Administrator may enter into an agreement with a qualified private contractor, as determined by the Administrator, to process loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the contractor a fee for each loan processed.

(B) LOAN LOSS VERIFICATION SERVICES.—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the lender or verification professional a fee for each loan for which such lender or verification professional verifies losses.

(7) DISASTER ASSISTANCE EMPLOYEES.—

- (A) IN GENERAL.—In carrying out this section, the Administrator may, where practicable,

ensure that the number of full-time equivalent employees—

- (i) in the Office of the Disaster Assistance is not fewer than 800; and
- (ii) in the Disaster Cadre of the Administration is not fewer than 1,000.

(B) REPORT.—In carrying out this subsection, if the number of full-time employees for either the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level described in subparagraph (A) for that office, not later than 21 days after the date on which that staffing level decreased below the level described in subparagraph (A), the Administrator shall submit to the Committee on Appropriations and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Appropriations and Committee on Small Business of the House of Representatives, a report—

- (i) detailing staffing levels on that date;
- (ii) requesting, if practicable and determined appropriate by the Administrator, additional funds for additional employees; and
- (iii) containing such additional information, as determined appropriate by the Administrator.

(8) INCREASED LOAN CAPS.—

(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed \$2,000,000.

(B) WAIVER AUTHORITY.—The Administrator may, at the discretion of the Administrator, increase the aggregate loan amount under subparagraph (A) for loans relating to a disaster to a level established by the Administrator, based on appropriate economic indicators for the region in which that disaster occurred.

(9) DECLARATION OF ELIGIBILITY FOR ADDITIONAL DISASTER ASSISTANCE.—

(A) IN GENERAL.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this paragraph.

(B) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this paragraph shall—

- (i) have resulted in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;
- (ii) be comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto, unless there is no successor to such plan, in which case this clause shall have no force or effect; and
- (iii) be of such size and scope that—
 - (I) the disaster assistance programs under the other paragraphs under this subsection are incapable of providing adequate and timely assistance to individuals or business concerns located within the disaster area; or
 - (II) a significant number of business concerns outside the disaster area have suffered disaster-related substantial economic injury as a result of the incident.

(C) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

(i) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this paragraph, the Administrator may make such loans under this subparagraph (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator determines appropriate to eligible small business concerns located anywhere in the United States.

(ii) PROCESSING TIME.—

(I) IN GENERAL.—If the Administrator determines that the average processing time

for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 15 days, the Administrator shall give priority to the processing of such applications submitted by eligible small business concerns located inside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(II) SUSPENSION OF APPLICATIONS FROM OUTSIDE DISASTER AREA.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 30 days, the Administrator shall suspend the processing of such applications submitted by eligible small business concerns located outside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(iii) LOAN TERMS.—A loan under this subparagraph shall be made on the same terms as a loan under paragraph (2).

(D) DEFINITIONS.—In this paragraph—

(i) the term "disaster area" means the area for which the applicable major disaster was declared;

(ii) the term "disaster-related substantial economic injury" means economic harm to a business concern that results in the inability of the business concern to—

(I) meet its obligations as it matures;

(II) meet its ordinary and necessary operating expenses; or

(III) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern because the business concern relies on materials from the disaster area or sells or markets in the disaster area; and

(iii) the term "eligible small business concern" means a small business concern—

(I) that has suffered disaster-related substantial economic injury as a result of the applicable major disaster; and

(II)(aa) for which not less than 25 percent of the market share of that small business concern is from business transacted in the disaster area;

(bb) for which not less than 25 percent of an input into a production process of that small business concern is from the disaster area; or

(cc) that relies on a provider located in the disaster area for a service that is not readily available elsewhere.

(10) REDUCING CLOSING AND DISBURSEMENT DELAYS.—The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.

(11) INCREASING TRANSPARENCY IN LOAN APPROVALS.—The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.

(12) ADDITIONAL AWARDS TO SMALL BUSINESS DEVELOPMENT CENTERS, WOMEN'S BUSINESS CENTERS, AND SCORE FOR DISASTER RECOVERY.—

(A) IN GENERAL.—The Administration may provide financial assistance to a small business development center, a women's business center described in section 656 of this title, the Service Corps of Retired Executives, or any proposed consortium of such individuals or entities to spur disaster recovery and growth of small business concerns located in an area for which the President has declared a major disaster.

(B) FORM OF FINANCIAL ASSISTANCE.—Financial assistance provided under this paragraph shall be in the form of a grant, contract, or cooperative agreement.

(C) NO MATCHING FUNDS REQUIRED.—Matching funds shall not be required for any grant, contract, or cooperative agreement under this paragraph.

(D) REQUIREMENTS.—A recipient of financial assistance under this paragraph shall provide counseling, training, and other related services, such as promoting long-term resiliency, to small business concerns and entrepreneurs impacted by a major disaster.

(E) PERFORMANCE.—

(i) IN GENERAL.—The Administrator, in cooperation with the recipients of financial assistance under this paragraph, shall establish metrics and goals for performance of grants, contracts, and cooperative agreements under this paragraph, which shall include recovery of sales, recovery of employment, reestablishment of business premises, and establishment of new small business concerns.

(ii) USE OF ESTIMATES.—The Administrator shall base the goals and metrics for performance established under clause (i), in part, on the estimates of disaster impact prepared by the Office of Disaster Assistance for purposes of estimating loan-making requirements.

(F) TERM.—

(i) IN GENERAL.—The term of any grant, contract, or cooperative agreement under this paragraph shall be for not more than 2 years.

(ii) EXTENSION.—The Administrator may make 1 extension of a grant, contract, or cooperative agreement under this paragraph for a period of not more than 1 year, upon a showing of good cause and need for the extension.

(G) EXEMPTION FROM OTHER PROGRAM REQUIREMENTS.—Financial assistance provided under this paragraph is in addition to, and wholly separate from, any other form of assistance provided by the Administrator under this chapter.

(H) COMPETITIVE BASIS.—The Administration shall award financial assistance under this paragraph on a competitive basis.

(13) SUPPLEMENTAL ASSISTANCE FOR CONTRACTOR MALFEASANCE.—

(A) IN GENERAL.—If a contractor or other person engages in malfeasance in connection with repairs to, rehabilitation of, or replacement of real or personal property relating to which a loan was made under this subsection and the malfeasance results in substantial economic damage to the recipient of the loan or substantial risks to health or safety, upon receiving documentation of the substantial economic damage or the substantial risk to health and safety from an independent loss verifier, and subject to subparagraph (B), the Administrator may increase the amount of the loan under this subsection, as necessary for the cost of repairs, rehabilitation, or replacement needed to address the cause of the economic damage or health or safety risk.

(B) REQUIREMENTS.—The Administrator may only increase the amount of a loan under subparagraph (A) upon receiving an appropriate certification from the borrower and person performing the mitigation attesting to the reasonableness of the mitigation costs and an assignment of any proceeds received from the person engaging in the malfeasance. The assignment of proceeds recovered from the person engaging in the malfeasance shall be equal to the amount of the loan under this section. Any mitigation activities shall be subject to audit and independent verification of completeness and cost reasonableness.

(14) BUSINESS RECOVERY CENTERS.—

(A) IN GENERAL.—The Administrator, acting through the district offices of the Administration, shall identify locations that may be used as recovery centers by the Administration in the event of a disaster declared under this subsection or a major disaster.

(B) REQUIREMENTS FOR IDENTIFICATION.—Each district office of the Administration shall—

(i) identify a location described in subparagraph (A) in each county, parish, or similar unit

of general local government in the area served by the district office; and

(ii) ensure that the locations identified under subparagraph (A) may be used as a recovery center without cost to the Government, to the extent practicable.

(15) INCREASED OVERSIGHT OF ECONOMIC INJURY DISASTER LOANS.—The Administrator shall increase oversight of entities receiving loans under paragraph (2), and may consider—

(A) scheduled site visits to ensure borrower eligibility and compliance with requirements established by the Administrator; and

(B) reviews of the use of the loan proceeds by an entity described in paragraph (2) to ensure compliance with requirements established by the Administrator.

(16) ¹² DISASTER DECLARATION IN RURAL AREAS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "rural area" means any county or other political subdivision of a State, the District of Columbia, or a territory or possession of the United States that is designated as a rural area by the Bureau of the Census; and

(ii) the term "significant damage" means, with respect to property, uninsured losses of not less than 40 percent of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower.

(B) DISASTER DECLARATION.—For the purpose of making loans under paragraph (1) or (2), the Administrator may declare a disaster in a rural area for which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) and for which individual assistance was not authorized under section 408 of such Act (42 U.S.C. 5174) if—

(i) the Governor of the State or the Chief Executive of the Indian tribal government in which the rural area is located requests such a declaration; and

(ii) any home, small business concern, private nonprofit organization, or small agricultural cooperative has incurred significant damage in the rural area.

(C) SBA REPORT.—Not later than 120 days after December 20, 2022, and every year thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on, with respect to the 1-year period preceding submission of the report—

(i) any economic injury that resulted from a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) in a rural area;

(ii) each request for assistance made by the Governor of a State or the Chief Executive of an Indian tribal government under subparagraph (B)(i) and the response of the Administrator, including the timeline for each response; and

(iii) any regulatory changes that will impact the ability of communities in rural areas to obtain disaster assistance under this subsection.

(16) ¹² STATUTE OF LIMITATIONS.—Notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a loan made under this subsection in response to COVID–19 during the covered period (as defined in section 9009(a) of this title) shall be filed not later than 10 years after the offense was committed.

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 (d) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b) shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however*, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding \$10,000, and 3 per centum on the amount of such loan over \$10,000 but not exceeding \$40,000. The interest rate on the Administration's share of the first \$250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than \$2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. Not later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committees of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

In the administration of the disaster loan program under paragraphs (1) and (2) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical

loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall not be less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other programs, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

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

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

(E) ¹³ A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5155(a)] to a disaster loan under paragraph (1) (2) ¹⁴ of this subsection.

With respect to any loan referred to in clause (D) which is outstanding on August 16, 1972, the Administrator shall—

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of August 16, 1972; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a].

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one half times the original principal amount of the loan.

(c) Private disaster loans

(1) Definitions

In this subsection—

(A) the term "disaster area" means any area for which the President declared a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9), during the period of that major disaster declaration;

(B) the term "eligible individual" means an individual who is eligible for disaster assistance under subsection (b)(1) relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9);

(C) the term "eligible small business concern" means a business concern that is—

(i) a small business concern, as defined under this chapter; or

(ii) a small business concern, as defined in section 103 of the Small Business Investment Act of 1958 [15 U.S.C. 662];

(D) the term "preferred lender" means a lender participating in the Preferred Lender Program;

(E) the term "Preferred Lender Program" has the meaning given that term in subsection (a)(2)(C)(ii); and

(F) the term "qualified private lender" means any privately-owned bank or other lending institution that—

(i) is not a preferred lender; and

(ii) the Administrator determines meets the criteria established under paragraph (10).

(2) Program required

The Administrator shall carry out a program, to be known as the Private Disaster Assistance program, under which the Administration may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual.

(3) Use of loans

A loan guaranteed by the Administrator under this subsection may be used for any purpose authorized under subsection (b).

(4) Online applications

(A) Establishment

The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this subsection.

(B) Other Federal assistance

The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this paragraph may be considered for any other Federal assistance program for disaster relief.

(C) Consultation

In establishing an online application process under this paragraph, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.

(5) Maximum amounts

(A) Guarantee percentage

The Administrator may guarantee not more than 85 percent of a loan under this subsection.

(B) Loan amount

The maximum amount of a loan guaranteed under this subsection shall be \$2,000,000.

(6) Terms and conditions

A loan guaranteed under this subsection shall be made under the same terms and conditions as a loan under subsection (b).

(7) Lenders

(A) In general

A loan guaranteed under this subsection made to—

(i) a qualified individual may be made by a preferred lender; and

(ii) a qualified small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to qualified individuals.

(B) Compliance

If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this subsection or violated the terms of the standard operating procedure agreement between that preferred lender and the Administration, the Administrator shall do 1 or more of the following:

(i) Exclude the preferred lender from participating in the program under this subsection.

(ii) Exclude the preferred lender from participating in the Preferred Lender Program for a

period of not more than 5 years.

(8) Fees

(A) In general

The Administrator may not collect a guarantee fee under this subsection.

(B) Origination fee

The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this subsection in an amount agreed upon in advance between the qualified private lender or preferred lender and the Administrator.

(9) Documentation

A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this subsection, to the extent authorized by the Administrator. The ability of a lender to use its own loan documentation for a loan guaranteed under this subsection shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under paragraph (10).

(10) Implementation regulations

(A) In general

Not later than 1 year after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall issue final regulations establishing permanent criteria for qualified private lenders.

(B) Report to Congress

Not later than 6 months after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall submit a report on the progress of the regulations required by subparagraph (A) to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(11) Authorization of appropriations

(A) In general

Amounts necessary to carry out this subsection shall be made available from amounts appropriated to the Administration to carry out subsection (b).

(B) Authority to reduce interest rates and other terms and conditions

Funds appropriated to the Administration to carry out this subsection,⁹ may be used by the Administrator to meet the loan terms and conditions specified in paragraph (6).

(12) Purchase of loans

The Administrator may enter into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this subsection.

(d) Extension or renewal of loans; purchase of participations; assumption of obligations; disaster loans; interest rates; loan amounts

(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b), the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments

on the non-Federal share of such loan: *Provided*, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior ¹⁵ August 13, 1981, 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-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed \$500,000 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-eighth of 1 per centum but not to exceed 8 per centum per annum;

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

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

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a). 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, private nonprofit organization, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a), or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of 7 years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1), shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under subsection (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 subsection (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 (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 subsection (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 \$14,000 or less (or such higher amount as the Administrator determines appropriate in the event of a major disaster) which are made under paragraph (1) of subsection (b): *Provided further*, That the Administrator, in obtaining the best available collateral for a loan of not more than \$200,000 under paragraph (1) or (2) of subsection (b) relating to damage to or destruction of the property of, or economic injury to, a small business concern, shall not require the owner of the small business concern to use the primary residence of the owner as collateral if the Administrator determines that the owner has other assets of equal quality and with a value equal to or greater than the amount of the loan that could be used as collateral for the loan: *Provided further*, That nothing in the preceding proviso may be construed to reduce the amount of collateral required by the Administrator in connection with a loan described in the preceding proviso or to modify the standards used to evaluate the quality (rather than the type) of such collateral. Employees of concerns sharing a common

business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on April 18, 1984, and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of April 18, 1984.

(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in subsection (b)(2) 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.

(8) DISASTER LOANS FOR SUPERSTORM SANDY.—

(A) **IN GENERAL.**—Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, nonprofit entity, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—

(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

(ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

(B) **TIMING.**—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.

(C) **INSPECTOR GENERAL REVIEW.**—Not later than 6 months after the date on which the Administrator begins carrying out this authority, the Inspector General of the Administration shall initiate a review of the controls for ensuring applicant eligibility for loans made under this paragraph.

(e) Funds for small business development centers under section 648 of this title

The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 648 of this title.

(f) Additional requirements for subsection (b) loans

(1) ¹⁶ Increased deferment authorized

(A) In general

In making loans under subsection (b), the Administrator may provide, to the person receiving the loan, an option to defer repayment on the loan.

(B) Period

The period of a deferment under subparagraph (A) may not exceed 4 years.

(g) Net earnings clauses prohibited for subsection (b) loans

In making loans under subsection (b), the Administrator shall not require the borrower to pay any non-amortized amount for the first five years after repayment begins.

(h) Loans to handicapped persons and organizations for handicapped

(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the

interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

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

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

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

(2) The Administration's share of any loan made under this subsection shall not exceed \$350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 633(c)(1)(B) of this title would exceed \$350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(i) Loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 631(b) ² of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed \$100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between \$3,500 and \$100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended [42 U.S.C. 2841 et seq.], as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

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

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

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

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however,* That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.] shall not exceed the rate currently applicable to new loans made under section 201 of that Act [42 U.S.C. 3141]; and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

(j) Financial assistance for projects providing technical or management assistance; areas of high concentration of unemployment or low-income; preferences; manner and method of payment; accessible services; program evaluations; establishment of development program; coordination of policies

(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under subsection (i), paragraph (10) of this subsection; and section 637(a) of this title, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 637(a) of this title.

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

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

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

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under subsection (i); paragraph (10) of this subsection, and section 637(a) of this title;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training, and legal and other related

services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 637(a) of this title. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under subsections (i) and (j), and section 637(a) of this title.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 637(a) of this title.

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

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) Repealed. Pub. L. 101-574, title II, §242(2), Nov. 15, 1990, 104 Stat. 2827.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of subsections (i) and (j) and section 637(a) of this title.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 637(a) of this title. The program, and all other services and activities authorized under this subsection and section 637(a) of this title, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).¹⁷

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

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

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

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

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical

assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958 [15 U.S.C. 694a et seq.].

(B) Small business concerns eligible to receive contracts pursuant to section 637(a) of this title shall participate in the Program.

(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 637(a) of this title on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

(I) 9 years less the number of years since the award of its first contract pursuant to section 637(a) of this title; or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to November 15, 1988, plus eighteen months.

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

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the "plan") as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 637(a)(6) of this title. Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 637(a) of this title.

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

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

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 637(a) of this title.

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

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

(V) Estimates of contract awards pursuant to section 637(a) of this title and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 637(a) of this title.

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation

shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title.

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 637(a) of this title for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) [15 U.S.C. 637(a)] contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 637(a) of this title, reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title,

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

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

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

(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 637(a) of this title shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 637(a)(9) of this title; or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 637(a)(9) of this title.

(F) For purposes of this section and section 637(a) of this title, the term "terminated" and the term "termination" means the total denial or suspension of assistance under this paragraph or under section 637(a) of this title prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including—

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

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 637(a) of this title;

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

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

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

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 645 of this title. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 637(a)(9) of this title.

(H) For the purposes of this subsection and section 637(a) of this title the term "graduated" or "graduation" means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 637(a) of this title.

(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 637(a) of this title (hereinafter referred to as "business activity targets."). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

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

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

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 637(a) of this title, expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on June 1, 1989;

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

(III) provide that, before the receipt of any contract to be awarded pursuant to section 637(a) of this title, the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

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

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 637(a) of this title; such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 637(a) of this title; except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 637(a)(9) of this title.

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the 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 637(a) of this title may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 637(a) of this title to a concern other than a small business concern.

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100-656, the "Business Opportunity Development Reform Act of 1988", shall be eligible for award of a contract pursuant to section 637(a) of this title.

(11)(A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under subsection (i) and small business concerns eligible to receive contracts pursuant to section 637(a) of this title.

(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 637(a) of this title to be socially and economically disadvantaged before August 15, 1989, shall be permitted to assert such disadvantage with respect to any other concern making application for certification after August 15, 1989.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 637(a)(4) of this title shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to paragraph (10) and section 637(a) of this title if—

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

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

(C) No concern, previously eligible for the award of contracts pursuant to section 637(a) of this title, shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 637(a)(4) of this title) to individuals who are determined to be socially and economically disadvantaged pursuant to section 637(a) of this title. In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 637(a)(9) of this title, the functions and responsibility of the Division are to—

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 637(a) of this title;

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

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

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 637(a) of this title;

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

(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 637 of this title, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due

consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12: ¹⁸

(A) Contract support pursuant to section 637(a) of this title.

(B) Financial assistance pursuant to subsection (a)(20).

(C) A maximum of two exemptions from the requirements of section 35(a) ² of title 41, which exemptions shall apply only to contracts awarded pursuant to section 637(a) of this title and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

(D) A maximum of five exemptions from the requirements of sections 3131 and 3133 of title 40, which exemptions shall apply only to contracts awarded pursuant to section 637(a) of this title, except that, such exemptions may be granted under this subparagraph only if—

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed \$3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 647(a) of this title. Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term "training provider" shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.]. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F)(i) 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.

(ii)(I) In this clause—

(aa) the term "covered period" means the 2-year period beginning on the date on which the President declared the applicable major disaster; and

(bb) the term "disaster area" means the area for which the President has declared a major disaster, during the covered period.

(II) The Administrator may transfer technology or surplus property under clause (i) on a priority basis to a small business concern located in a disaster area if—

(aa) the small business concern meets the requirements for such a transfer, without regard to whether the small business concern is a Program Participant; and

(bb) for a small business concern that is a Program Participant, on and after the date on which the President declared the applicable major disaster, the small business concern has not received property under this subparagraph on the basis of the status of the small business concern as a Program Participant.

(III) For any transfer of property under this clause to a small business concern, the terms and conditions shall be the same as a transfer to a Program Participant, except that the small business concern shall agree not to sell or transfer the property to any party other than the Federal Government during the covered period.

(IV) A small business concern that receives a transfer of property under this clause may not receive a transfer of property under clause (i) during the covered period.

(V) If a small business concern sells or transfers property in violation of the agreement described in subclause (III), the Administrator may initiate proceedings to prohibit the small business concern from receiving a transfer of property under this clause or clause (i), in addition to any other remedy available to the Administrator.

(iii)(I) In this clause, the term "covered period" means—

(aa) in the case of a Puerto Rico business, the period beginning on August 13, 2018, and

ending on the date on which the Oversight Board established under section 2121 of title 48 terminates; and

(bb) in the case of a covered territory business, the period beginning on January 1, 2021, and ending on the date that is 4 years after such date.

(II) The Administrator may transfer technology or surplus property under clause (i) to a Puerto Rico business or a covered territory business if either such business meets the requirements for such a transfer, without regard to whether either such business is a Program Participant.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 637(a) of this title in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 637(a) of this title for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of November 15, 1988.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 637(a) of this title.

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

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 637(a) of this title, and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and subsection (a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 637(a) of this title and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 637(a) of this title.

(vii) The total dollar value of contracts and options awarded pursuant to section 637(a) of this title, at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

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

(k) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

In carrying out its functions under subsections (i) and (j) and section 637(a) of this title, the Administration is authorized—

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

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

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31; and

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(l) Small business intermediary lending pilot program

(1) Definitions

In this subsection—

(A) the term "eligible intermediary"—

(i) means a private, nonprofit entity that—

(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

(ii) includes—

- (I) a private, nonprofit community development corporation;
- (II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and
- (III) an agency of or nonprofit entity established by a Native American Tribal Government; and

(B) the term "Program" means the small business intermediary lending pilot program established under paragraph (2).

(2) Establishment

There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

(3) Purposes

The purposes of the Program are—

- (A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and
- (B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

(4) Loans to eligible intermediaries

(A) Application

Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

- (i) the type of small business concerns to be assisted;
- (ii) the size and range of loans to be made;
- (iii) the interest rate and terms of loans to be made;
- (iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;
- (v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and
- (vi) the qualifications of the applicant to carry out this subsection.

(B) Loan limits

No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

(C) Loan duration

Loans made by the Administrator under this subsection shall be for a term of 20 years.

(D) Applicable interest rates

Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

(E) Fees; collateral

The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

(F) Delayed payments

The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of

the initial disbursement of funds under that loan.

(G) Maximum participants and amounts

During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

- (i) to not more than 20 eligible intermediaries; and
- (ii) in a total amount of not more than \$20,000,000.

(5) Loans to small business concerns

(A) In general

The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) Maximum loan

An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

(C) Applicable interest rates

A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

(D) Review restrictions

The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

(6) Termination

The authority of the Administrator to make loans under the Program shall terminate 3 years after September 27, 2010.

(m) Microloan Program

(1)(A) Purposes

The purposes of the Microloan Program are—

(i) to assist women, low-income, veteran (within the meaning of such term under section 632(q) of this title), and minority entrepreneurs and business owners and other such individuals possessing the capability to operate successful business concerns;

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

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

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than \$10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and

(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and

feasibility of implementing such a program nationwide; and

(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

- (I) establishing small businesses; and
- (II) eliminating their dependence on that assistance.

(B) Establishment

There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed \$50,000 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); ² and

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

(3) Loans to intermediaries

(A) Intermediary applications

(i) In general

As part of its application for a loan, each intermediary shall submit a description to the Administration of—

- (I) the type of businesses to be assisted;
- (II) the size and range of loans to be made;
- (III) the geographic area to be served and its economic, poverty, and unemployment characteristics;
- (IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;
- (V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;
- (VI) the local economic credit markets, including the costs associated with obtaining credit locally;
- (VII) the qualifications of the applicant to carry out the purpose of this subsection; and
- (VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

(ii) Selection of intermediaries

In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than \$10,000.

(B) Intermediary contribution

As a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administrator 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 chapter would, as a result of such loan, exceed \$750,000 in the first year of such intermediary's participation in the program, \$7,000,000 (in the aggregate) in the remaining years of the intermediary's participation in the program, and \$3,000,000 in any of those remaining years.

(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,¹⁹ 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 ²⁰ 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 \$50,000, or have outstanding or committed to any 1 borrower more than \$50,000.

(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) ²¹ 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 subparagraphs (C) and (G) 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

subparagraphs (C) and (G), 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 a 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

In addition to grants made under subparagraph (A) or (G), 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 1 or more residents of an economically distressed area; or
- (II) the intermediary has a portfolio of loans made under this subsection—
 - (aa) that averages not more than \$10,000 during the period of the intermediary's participation in the program; or
 - (bb) of which not less than 25 percent is serving rural areas 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),⁹ 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 50 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) Technical assistance

An intermediary may expend not more than 50 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 ² 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.

(G) Grant amounts based on appropriations

In any fiscal year in which the amount appropriated to make grants under subparagraph (A) is sufficient to provide to each intermediary that receives a loan under paragraph (1)(B)(i) a grant of not less than 25 percent of the total outstanding balance of loans made to the intermediary under this subsection, the Administration shall make a grant under subparagraph (A) to each intermediary of not less than 25 percent and not more than 30 percent of that total outstanding balance for the intermediary.

(5) Private sector borrowing technical assistance grants

Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

(A) Grant amounts

Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each in amounts not to exceed \$200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

(B) Contribution

As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(6) Loans to small business concerns from eligible intermediaries

(A) In general

An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) Portfolio requirement

To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than \$15,000.

(C) Interest limit

Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) Review restriction

The Administration shall not review individual microloans made by intermediaries prior to approval.

(E) Establishment of child care or transportation businesses

In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(7) Program funding for microloans

(A) Number of participants

Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

(B) Allocation

(i) Minimum allocation

Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) \$800,000; or

(bb) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(II) any additional amount, as determined by the Administration.

(ii) Redistribution

If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the

Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

(8) Equitable distribution of intermediaries

In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

(9) Grants for management, marketing, technical assistance, and related services

(A) In general

The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

(B) Assistance amount

The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing.²² 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 \$50,000, 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.²³

(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).

(n) Repayment deferred for active service reservists

(1) Definitions

In this subsection:

(A) Active service

The term "active service" has the meaning given that term in section 101(d)(3) of title 10.

(B) Eligible reservist

The term "eligible reservist" means a member of a reserve component of the Armed Forces ordered to perform active service for a period of more than 30 consecutive days.

(C) 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.

(D) Qualified borrower

The term "qualified borrower" means—

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

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

(2) Deferral of direct loans

(A) In general

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

(B) Period of deferral

The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active service and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active service.

(C) Interest rate reduction during deferral

Notwithstanding any other provision of law, during the period of deferral described in subparagraph (B), the Administration may, in its discretion, reduce the interest rate on any loan qualifying for a deferral under this paragraph.

(3) Deferral of loan guarantees and other financings

The Administration shall—

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

(B) not later than 30 days after August 17, 1999, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) and financings under section 697a of this title that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3), and loan guarantees provided under subsection (m) if the intermediary provides relief to a small business concern under this paragraph; and

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

(Pub. L. 85-536, §2[7], July 18, 1958, 72 Stat. 387; Pub. L. 85-699, title VI, §602(c), Aug. 21, 1958, 72 Stat. 698; Pub. L. 86-367, §2, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87-70, title III, §305[a], June 30, 1961, 75 Stat. 167; Pub. L. 87-305, §9, Sept. 26, 1961, 75 Stat. 668; Pub. L. 88-264, §1, Feb. 5, 1964, 78 Stat. 7; Pub. L. 88-560, title III, §319, Sept. 2, 1964, 78 Stat. 794; Pub. L. 89-59, §1(a), (b), June 30, 1965, 79 Stat. 206; Pub. L. 89-409, §3(a), May 2, 1966, 80 Stat. 133; Pub. L. 89-769, §7(b), Nov. 6, 1966, 80 Stat. 1319; Pub. L. 90-104, title I, §§103, 104, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90-448, title XI, §1106(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 90-495, §31, Aug. 23, 1968,

82 Stat. 835; Pub. L. 91-173, title V, §504(a), (b), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91-596, §28(a), (b), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91-597, §25(a), (b), Dec. 29, 1970, 84 Stat. 1633, 1634; Pub. L. 92-385, §§1(a), 2(a), Aug. 16, 1972, 86 Stat. 554, 555; Pub. L. 92-500, §8(a), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92-595, §3(b), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93-237, §§2(a), (b), 3(a), 5, 6, Jan. 2, 1974, 87 Stat. 1023, 1024; Pub. L. 93-386, §§2(a)(4), 3(2), 8, 9, 12, Aug. 23, 1974, 88 Stat. 742, 746, 748, 749; Pub. L. 94-305, title I, §§108(b), 109, 111, 112(c), (d), 114, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95-89, title I, §101(d), (e), title III, §§301, 302, title IV, §§402-405, Aug. 4, 1977, 91 Stat. 553, 558-560; Pub. L. 95-315, §§2, 3, July 4, 1978, 92 Stat. 377, 378; Pub. L. 95-507, title II, §§204, 205, 231, Oct. 24, 1978, 92 Stat. 1764, 1766, 1772; Pub. L. 95-510, §104, Oct. 24, 1978, 92 Stat. 1782; Pub. L. 96-38, title I, §101(a), (b), July 25, 1979, 93 Stat. 118; Pub. L. 96-302, title I, §§119(a), (b), 122-124, title II, §203, title V, §505, July 2, 1980, 94 Stat. 840, 841, 843, 848, 852; Pub. L. 96-481, title I, §§104, 106(a), 107, 112, Oct. 21, 1980, 94 Stat. 2322, 2323; Pub. L. 97-35, title XIX, §§1902, 1910-1912, 1913(a), (c), 1914, Aug. 13, 1981, 95 Stat. 767, 778-780; Pub. L. 98-270, title III, §§301, 304, 308, 309, 311, Apr. 18, 1984, 98 Stat. 159-161; Pub. L. 98-395, §5, Aug. 21, 1984, 98 Stat. 1368; Pub. L. 99-272, title XVIII, §§18006(a)(1), (2), 18007, 18013, Apr. 7, 1986, 100 Stat. 366, 370; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-418, title VIII, §§8005, 8007(a), Aug. 23, 1988, 102 Stat. 1557, 1559; Pub. L. 100-533, title III, §302(a), Oct. 25, 1988, 102 Stat. 2693; Pub. L. 100-590, title I, §§102(a), 103, 111(c), 119(a), 120-122, Nov. 3, 1988, 102 Stat. 2992, 2995, 2999, 3000; Pub. L. 100-656, title II, §§201(a), 202, 203, 205, 206, 208, title III, §§301-303(a), title IV, §408, title V, §505(h), Nov. 15, 1988, 102 Stat. 3856, 3858, 3859, 3861, 3862, 3865-3868, 3877, 3887; Pub. L. 100-707, title I, §109(f), Nov. 23, 1988, 102 Stat. 4708; Pub. L. 101-37, §§4-6(a), 7(a), 8-10(b), June 15, 1989, 103 Stat. 70-73; Pub. L. 101-162, title V, (1), (2), Nov. 21, 1989, 103 Stat. 1024, 1025; Pub. L. 101-574, title II, §§202, 204(a), 206, 242, 245, title III, §307, Nov. 15, 1990, 104 Stat. 2818-2820, 2827, 2830; Pub. L. 102-140, title VI, §609(b), (h), Oct. 28, 1991, 105 Stat. 825, 827; Pub. L. 102-191, §4, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102-366, title I, §§104, 113(a), title II, §211, Sept. 4, 1992, 106 Stat. 988, 989, 997; Pub. L. 102-564, title III, §307(b), (c), Oct. 28, 1992, 106 Stat. 4263, 4264; Pub. L. 103-81, §§4, 5(a), 8, Aug. 13, 1993, 107 Stat. 781, 782; Pub. L. 103-403, title II, §§201, 202, 204-208(b), 209-211, title VI, §§603-605(a), Oct. 22, 1994, 108 Stat. 4180-4183, 4202, 4203; Pub. L. 104-36, §§2-4(a), 5, Oct. 12, 1995, 109 Stat. 295-297; Pub. L. 104-208, div. D, title I, §§103(a)-(d), (f), 105, 107, 111, Sept. 30, 1996, 110 Stat. 3009-726, 3009-727, 3009-731 to 3009-733; Pub. L. 105-135, title II, §§201, 202(a), 231, title VII, §706, Dec. 2, 1997, 111 Stat. 2597, 2598, 2606, 2637; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(10), (f)(9)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-420, 2681-430; Pub. L. 106-8, §3(a), (c), Apr. 2, 1999, 113 Stat. 13, 16; Pub. L. 106-22, §§2, 3, Apr. 27, 1999, 113 Stat. 36, 37; Pub. L. 106-24, §1(a), Apr. 27, 1999, 113 Stat. 39; Pub. L. 106-50, title IV, §§401(b), 402(a), (b), 403, 404, Aug. 17, 1999, 113 Stat. 244-246; Pub. L. 106-554, §1(a)(9) [title II, §§202-208(a), 210, title VIII, §802(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-681 to 2763A-684, 2763A-702; Pub. L. 107-100, §6(a), Dec. 21, 2001, 115 Stat. 970; Pub. L. 108-447, div. K, title I, §§101(a), 102, 103(a), 107(a), (b), Dec. 8, 2004, 118 Stat. 3442-3446; Pub. L. 109-163, div. A, title VIII, §845(a)(2), (c), Jan. 6, 2006, 119 Stat. 3390, 3391; Pub. L. 110-140, title XII, §§1201, 1202, Dec. 19, 2007, 121 Stat. 1764, 1765; Pub. L. 110-186, title II, §§201(a), 203, 204, 208, Feb. 14, 2008, 122 Stat. 627, 629, 631; Pub. L. 110-234, title XII, §§12061, 12063(a), (c)(2), 12065, 12066(a), 12068(a), (b)(2), 12070, 12074(a), 12077-12078(b)(1), (c), 12081-12083(a), May 22, 2008, 122 Stat. 1406, 1407, 1409-1411, 1414-1418; Pub. L. 110-246, §4(a), title XII, §§12061, 12063(a), (c)(2), 12065, 12066(a), 12068(a), (b)(2), 12070, 12074(a), 12077-12078(b)(1), (c), 12081-12083(a), June 18, 2008, 122 Stat. 1664, 2168, 2169, 2171-2173, 2176-2180; Pub. L. 111-240, title I, §§1111, 1113, 1131(a), 1133, 1135, 1206(a)-(g), 1401(a), (c)(1), Sept. 27, 2010, 124 Stat. 2507, 2508, 2512, 2514, 2520, 2530-2532, 2547, 2549; Pub. L. 112-74, div. C, title V, §531, Dec. 23, 2011, 125 Stat. 922; Pub. L. 112-239, div. A, title XVI, §1622(c), Jan. 2, 2013, 126 Stat. 2069; Pub. L. 113-128, title V, §512(cc), July 22, 2014, 128 Stat. 1717; Pub. L. 114-38, §2, 4(b), July 28, 2015, 129 Stat. 437, 438; Pub. L. 114-88, div. A, title I, §§1101-1104, div. B, title I, §§2101, 2102(a), (b), 2105-2107, 2109, title II, §2201, title III, §2301(a), Nov. 25, 2015, 129 Stat. 687-690, 692, 694, 695; Pub. L. 114-92, div. A, title VIII,

§865(a)(2), Nov. 25, 2015, 129 Stat. 928; Pub. L. 115–141, div. E, title V, §532, Mar. 23, 2018, 132 Stat. 581; Pub. L. 115–189, §4(a)(2), June 21, 2018, 132 Stat. 1497; Pub. L. 115–232, div. A, title VIII, §§853(b), 861(c), 862(b)(1), (f), Aug. 13, 2018, 132 Stat. 1885, 1896, 1897, 1900; Pub. L. 115–370, §2, Dec. 21, 2018, 132 Stat. 5105; Pub. L. 116–92, div. A, title VIII, §877(a), Dec. 20, 2019, 133 Stat. 1529; Pub. L. 116–136, div. A, title I, §§1102(a), (c), (d), 1110(f), Mar. 27, 2020, 134 Stat. 286, 294, 308; Pub. L. 116–139, div. A, §101(d), Apr. 24, 2020, 134 Stat. 621; Pub. L. 116–142, §§2(a), 3(a), (c), June 5, 2020, 134 Stat. 641, 642; Pub. L. 116–260, div. N, title III, §§304(a), (b)(1)(C)(ii), 308(a), 310(a)(1), (b), 311(a), 313(a), 315(a), 316–319, 326, 329(a), 334, 335(a), 336(a), 337(a), 338(a), 339(b), 340(a), (b)(1), 341–343(a), 344, Dec. 27, 2020, 134 Stat. 1993, 1994, 2000, 2001, 2008, 2011–2015, 2036, 2037, 2041, 2042, 2047, 2048, 2049–2051; Pub. L. 116–283, div. A, title VIII, §866(b), Jan. 1, 2021, 134 Stat. 3785; Pub. L. 117–2, title V, §5001(a), (b), (c)(2), Mar. 11, 2021, 135 Stat. 81–84; Pub. L. 117–6, §2(a), Mar. 30, 2021, 135 Stat. 250; Pub. L. 117–165, §2(a), Aug. 5, 2022, 136 Stat. 1363; Pub. L. 117–166, §2, Aug. 5, 2022, 136 Stat. 1365; Pub. L. 117–249, §2(a), Dec. 20, 2022, 136 Stat. 2350.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsections (b) and (c) of section 631 of this title, referred to in subsecs. (a)(11) and (i)(1), were redesignated subsections (c) and (d), respectively, and a new subsection (b) was added by Pub. L. 100–418, title VIII, §8002, Aug. 23, 1988, 102 Stat. 1553.

The Small Business Investment Act of 1958, referred to in subsecs. (a)(13), (36)(A)(xi)(III) and (j)(10)(A)(vi), (13)(D)(i), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689. Title IV, part B of title IV, and title V of the Act are classified generally to subchapter IV–A (§692 et seq.), part B (§694a et seq.) of subchapter IV–A, and subchapter V (§695 et seq.), respectively, of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Trade Act of 1974, referred to in subsec. (a)(16)(E), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978. Chapter 3 of title II of the Act is classified generally to part 3 (§2341 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

Section 7002(b) of the Families First Coronavirus Response Act, referred to in subsec. (a)(36)(A)(v), is section 7002(b) of Pub. L. 116–127, which is set out in a note under section 1401 of Title 26, Internal Revenue Code.

Section 7001 of the Families First Coronavirus Response Act, referred to in subsec. (a)(36)(A)(viii)(II)(dd), is section 7001 of Pub. L. 116–127, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

Section 7003 of the Families First Coronavirus Response Act, referred to in subsec. (a)(36)(A)(viii)(II)(ee), is section 7003 of Pub. L. 116–127, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (a)(36)(A)(xi)(II), is section 308 of Pub. L. 101–73, which is set out as a note under section 1463 of Title 12, Banks and Banking.

The Communications Act of 1934, referred to in subsec. (a)(36)(D)(iii)(II)(aa), (IV)(aa), is act June 19, 1934, ch. 652, 48 Stat. 1064. Title III of the Act is classified generally to subchapter III (§301 et seq.) of chapter 5 of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a)(36)(O)(ii), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

Section 9009a of this title and such section 9009a, referred to in subsec. (a)(36)(U), (37)(A)(iv)(III)(ee), were in the original "section 24 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act" and "such section 24", respectively. The named Act was enacted as title III of div. N of Pub. L. 116–260, and section 324 of such title III, which defines "eligible person or entity" for purposes of that section, is classified to section 9009a of this title.

Section 2301 of the CARES Act, referred to in subsec. (a)(37)(J)(iii)(I)(aa), is section 2301 of Pub. L.

116–136, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

Section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020, referred to in subsec.

(a)(37)(J)(iii)(I)(bb), is section 303 of of div. EE of Pub. L. 116–260, title III, Dec. 27, 2020, 134 Stat. 3075. Subsec. (a) of section 303 is not classified to the Code. Subsec. (d) of section 303 amended provisions set out as notes under section 3111 of Title 26, Internal Revenue Code, and is otherwise not classified to the Code. For complete classification of section 303 to the Code, see Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, formerly known as the Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a], referred to in penultimate par. of subsec. (b), was repealed by Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781.

The date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, referred to in subsec. (c)(10), is the date of enactment of subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, which was approved June 18, 2008.

Reorganization Plan Numbered 2 of 1954, referred to in subsec. (d)(1), is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1957, referred to in subsec. (d)(1), is set out in the Appendix to Title 5.

The Economic Opportunity Act of 1964, referred to in subsec. (i)(3), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508. Title III of the Act was classified generally to subchapter III (§2841 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

The Public Works and Economic Development Act of 1965, referred to in subsec. (i)(5)(D), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, which is classified generally to chapter 38 (§3121 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables.

Section 602(b) of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988", referred to in subsec. (j)(10)(J)(ii)(III), is set out as a note under section 637 of this title.

Section 35(a) of title 41, referred to in subsec. (j)(13)(C), was struck out and former section 35(b) of title 41 redesignated section 35(a) by Pub. L. 103–355, title VII, §7201(1), Oct. 13, 1994, 108 Stat. 3378. Section 35 of title 41 was subsequently repealed and restated as sections 6501(1) and 6502 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The Workforce Innovation and Opportunity Act, referred to in subsec. (j)(13)(E), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425. Title I of the Act is classified generally to subchapter I (§3111 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (m)(1)(A)(iv), (4)(F)(iii)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Paragraph (10), referred to in subsec. (m)(2)(A), was redesignated paragraph (11) by Pub. L. 102–366, title I, §113(a)(8), Sept. 4, 1992, 106 Stat. 992.

Section 202(b) of the Small Business Reauthorization Act of 1997, referred to in subsec. (m)(4)(F)(i), is section 202(b) of Pub. L. 105–135, which is set out as a note below.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (m)(4)(F)(iii)(II)(aa), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, which is classified generally to subchapter II–B (§9857 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 9857(a) of Title 42 and Tables.

CODIFICATION

September 30, 1996, referred to in subsec. (a)(25)(C), was in the original "the date of enactment of this subsection" which was translated as meaning the date of enactment of Pub. L. 104–208, which enacted par. (25) of subsec. (a), to reflect the probable intent of Congress.

In subsec. (d)(3), "August 13, 1981" substituted for "the effective date of this Act", such words having been inserted in place of "to October 1, 1983" by section 1914 of Pub. L. 97–35. "This Act" probably meant the

Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981 (title XIX of Pub. L. 97-35) rather than the Small Business Act (Pub. L. 85-536). See Effective Date of 1981 Amendment note set out under section 631 of this title.

In subsec. (j)(11)(B)(i), as enacted by the amendments made by Pub. L. 101-37, "August 15, 1989" substituted for "the effective date of this subparagraph" and "such effective date". Section 32 of Pub. L. 101-37 provided that the amendments made by Pub. L. 101-37 shall apply as if included in Pub. L. 100-656. Section 803(b)(1)(A) of Pub. L. 100-656 provided that the amendment made by section 201(a) thereof to subsec. (j)(11) shall take effect on June 1, 1989. Section 31 of Pub. L. 101-37 amended section 803(b) of Pub. L. 100-656 to make such amendments effective on August 15, 1989, in place of June 1, 1989. See 1988 and 1989 Effective Date of Amendment notes below.

"Sections 3131 and 3133 of title 40" substituted in subsec. (j)(13)(D) for "the Act entitled 'An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works', approved August 24, 1935 (49 Stat. 793)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (k)(3), "section 1342 of title 31" substituted for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section 3109 of title 5, referred to in subsec. (k)(4), substituted for "section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (k)(4), substituted for "section 5 of such Act (5 U.S.C. 73b-2)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (e) of this section were contained in section 2(a) and (b) of Pub. L. 87-550, July 25, 1962, 76 Stat. 221 (formerly classified to section 637a(a) and (b) of this title) prior to repeal thereof by section 3(b) of Pub. L. 89-409.

Prior similar provisions were contained in section 207 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, as amended by acts Aug. 9, 1955, ch. 628, §§2, 5, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§2, 3, 70 Stat. 10; Pub. L. 85-335, Feb. 22, 1958, 72 Stat. 27, which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2022—Subsec. (a)(36)(W). Pub. L. 117-166, §2(a), added subpar. (W).

Subsec. (a)(37)(P). Pub. L. 117-166, §2(b), added subpar. (P).

Subsec. (b)(16). Pub. L. 117-249 added par. (16) relating to disaster declaration in rural areas.

Pub. L. 117-165 added par. (16) relating to statute of limitations.

2021—Subsec. (a)(36)(A)(iii). Pub. L. 117-6 substituted "June 30, 2021" for "March 31, 2021".

Subsec. (a)(36)(A)(xvii). Pub. L. 117-2, §5001(a)(1)(A), added cl. (xvii).

Subsec. (a)(36)(D)(iii)(III). Pub. L. 117-2, §5001(a)(1)(B)(i), added subcl. (III).

Subsec. (a)(36)(D)(iii)(IV). Pub. L. 117-2, §5001(b)(1)(A), added subcl. (IV).

Subsec. (a)(36)(D)(iv)(V). Pub. L. 117-2, §5001(b)(1)(B), added subcl. (V).

Subsec. (a)(36)(D)(v). Pub. L. 117-2, §5001(b)(1)(C), substituted "subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix)" for "clause (iii)(II), (iv)(IV), or (vii)".

Subsec. (a)(36)(D)(viii)(II). Pub. L. 117-2, §5001(b)(1)(D), substituted "business concern made eligible by subclause (II) or (IV) of clause (iii) or subclause (IV) or (V) of clause (iv) of this subparagraph" for "business concern made eligible by clause (iii)(II) or clause (iv)(IV) of this subparagraph" and inserted "or organization" after "business concern" in two places.

Subsec. (a)(36)(D)(ix). Pub. L. 117-2, §5001(a)(1)(B)(ii), added cl. (ix).

Subsec. (a)(37)(A)(i). Pub. L. 117-2, §5001(a)(2), inserted " 'additional covered nonprofit entity'," after "the terms".

Subsec. (a)(37)(A)(iv)(II). Pub. L. 117-2, §5001(b)(2), substituted "subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix)" for "clause (iii)(II), (iv)(IV), or (vii)".

Subsec. (a)(37)(J)(iii)(I)(cc). Pub. L. 117-2, §5001(c)(2), added item (cc).

Subsec. (j)(13)(F)(iii)(I). Pub. L. 116-283, §866(b)(1), substituted "means—" and items (aa) and (bb) for "means the period beginning on August 13, 2018, and ending on the date on which the Oversight Board established under section 2121 of title 48 terminates."

Subsec. (j)(13)(F)(iii)(II). Pub. L. 116-283, §866(b)(2), inserted "or a covered territory business" after "a Puerto Rico business" and, in two places, substituted "either such business" for "the Puerto Rico business".

2020—Subsec. (a)(2)(A). Pub. L. 116-260, §326(a)(2), amended subpar. (A) generally. Prior to amendment, text read as follows: "Except as provided in subparagraphs (B), (D), (E), and (F), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program or the Community Advantage Pilot Program of the Administration), such participation by the Administration shall be equal to 90 percent of the balance of the financing outstanding at the time of disbursement of the loan."

Pub. L. 116-260, §326(a)(1), substituted "the Preferred Lenders Program or the Community Advantage Pilot Program of the Administration), such participation by the Administration shall be equal to 90 percent of the balance of the financing outstanding at the time of disbursement of the loan." for "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."

Pub. L. 116-136, §1102(a)(1)(A), substituted "(E), and (F)" for "and (E)" in introductory provisions.

Subsec. (a)(2)(F). Pub. L. 116-136, §1102(a)(1)(B), added subpar. (F).

Subsec. (a)(7). Pub. L. 116-260, §334, designated existing provisions as subpar. (A), inserted heading, substituted "The Administrator" for "The Administration", inserted "and interest" after "principal", and added subpars. (B) and (C).

Subsec. (a)(31)(A)(iv). Pub. L. 116-260, §326(b)(2)(B), substituted "guarantee rate of not more than 50 percent." for "guarantee rate—

"(I) for a loan in an amount less than or equal to \$350,000, of not more than 75 percent; and

"(II) for a loan in an amount greater than \$350,000, of not more than 50 percent."

Pub. L. 116-260, §326(b)(2)(A), substituted "with a guarantee rate—

"(I) for a loan in an amount less than or equal to \$350,000, of not more than 75 percent; and

"(II) for a loan in an amount greater than \$350,000, of not more than 50 percent."

for "with a guaranty rate of not more than 50 percent."

Subsec. (a)(31)(D). Pub. L. 116-136, §1102(c)(2), as amended by Pub. L. 116-260, §326(b)(1), substituted "\$500,000" for "\$1,000,000".

Pub. L. 116-136, §1102(c)(1), substituted "\$1,000,000" for "\$350,000".

Subsec. (a)(31)(G)(ii), (iii). Pub. L. 116-136, §1102(d), redesignated cl. (iii) as (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: "If the President's budget for the upcoming fiscal year, submitted to Congress pursuant to section 1105(a) of title 31, includes a cost for the program established under this subsection that is above zero, the requirements of clause (i) shall not apply to loans made during such upcoming fiscal year."

Subsec. (a)(36). Pub. L. 116-136, §1102(a)(2), added par. (36).

Subsec. (a)(36)(A)(iii). Pub. L. 116-260, §343(a), substituted "March 31, 2021" for "December 31, 2020".

Pub. L. 116-142, §3(a), substituted "December 31, 2020" for "June 30, 2020".

Subsec. (a)(36)(A)(viii)(I)(aa)(EE). Pub. L. 116-260, §308(a), inserted "or group life, disability, vision, or dental insurance" before "benefits".

Subsec. (a)(36)(A)(viii)(I)(bb). Pub. L. 116-260, §344(1), substituted "on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred" for "in 1 year, as prorated for the covered period".

Subsec. (a)(36)(A)(viii)(II)(aa). Pub. L. 116-260, §344(2)(A), substituted "\$100,000 on an annualized basis, as prorated for the period during which the compensation is paid or the obligation to pay the compensation is incurred" for "an annual salary of \$100,000, as prorated for the covered period".

Subsec. (a)(36)(A)(viii)(II)(bb). Pub. L. 116-260, §344(2)(B), substituted "applicable period" for "covered period".

Subsec. (a)(36)(A)(x) to (xii). Pub. L. 116-139, §101(d)(1), added cls. (x) to (xii).

Subsec. (a)(36)(A)(xiii). Pub. L. 116-260, §315(a), added cl. (xiii).

Subsec. (a)(36)(A)(xiv). Pub. L. 116-260, §316(1), added cl. (xiv).

Subsec. (a)(36)(A)(xv). Pub. L. 116-260, §318(1), added cl. (xv).

Subsec. (a)(36)(A)(xvi). Pub. L. 116-260, §342(1), added cl. (xvi).

Subsec. (a)(36)(D)(i). Pub. L. 116-260, §316(2)(A), inserted "housing cooperative," before "veterans organization," wherever appearing.

Subsec. (a)(36)(D)(ii)(II). Pub. L. 116-260, §335(a), substituted "as determined necessary by the Administrator and the Secretary, to establish the applicant as eligible" for "as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099-MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary".

Subsec. (a)(36)(D)(iii). Pub. L. 116-260, §317(a), designated existing provisions as subcl. (I), inserted heading, and added subcl. (II).

Subsec. (a)(36)(D)(iv)(IV). Pub. L. 116-260, §317(b), added subcl. (IV).

Subsec. (a)(36)(D)(v). Pub. L. 116-260, §318(2)(A), inserted "or for purposes of determining the number of employees of a housing cooperative or a business concern or organization made eligible for a loan under this paragraph under clause (iii)(II), (iv)(IV), or (vii)," before "the term 'employee'".

Subsec. (a)(36)(D)(vi). Pub. L. 116-260, §318(2)(B), inserted "a business concern or organization made eligible for a loan under this paragraph under clause (vii)," after "a nonprofit organization,".

Pub. L. 116-260, §316(2)(B), which directed the insertion of ", a housing cooperative," before "a veterans organization", was executed by making the insertion before "and a veterans organization" to reflect the probable intent of Congress.

Subsec. (a)(36)(D)(vii). Pub. L. 116-260, §318(2)(C), added cl. (vii).

Subsec. (a)(36)(D)(viii). Pub. L. 116-260, §317(c), in cl. (viii) added by section 342(2) of Pub. L. 116-260, designated existing provisions as subcl. (I), inserted heading, substituted "Subject to subclause (II), and notwithstanding" for "Notwithstanding", and added subcl. (II).

Pub. L. 116-260, §342(2), added cl. (viii).

Subsec. (a)(36)(E). Pub. L. 116-260, §313(a)(1), substituted "Except as provided in subparagraph (V), during" for "During" in introductory provisions.

Subsec. (a)(36)(E)(i)(I)(aa)(AA). Pub. L. 116-260, §336(a), substituted "except that an applicant that is a seasonal employer shall use the average total monthly payments for payroll for any 12-week period selected by the seasonal employer between February 15, 2019, and February 15, 2020" for "except that, in the case of an applicant that is seasonal employer, as determined by the Administrator, the average total monthly payments for payroll shall be for the 12-week period beginning February 15, 2019, or at the election of the eligible recipient, March 1, 2019, and ending June 30, 2019".

Subsec. (a)(36)(F)(i)(VIII) to (XI). Pub. L. 116-260, §304(a), added subcls. (VIII) to (XI).

Subsec. (a)(36)(F)(v). Pub. L. 116-260, §337(a), substituted "clause (i) or (iv)" for "clause (i)".

Subsec. (a)(36)(F)(vi). Pub. L. 116-260, §319, added cl. (vi).

Subsec. (a)(36)(H). Pub. L. 116-260, §338(a)(1), substituted "With" for "During the covered period, with" in introductory provisions.

Subsec. (a)(36)(J). Pub. L. 116-260, §338(a)(2), substituted "With" for "During the covered period, with" in introductory provisions.

Subsec. (a)(36)(K). Pub. L. 116-260, §304(b)(1)(C)(ii)(I), substituted "section 636m" for "section 9005" in introductory provisions.

Subsec. (a)(36)(K)(ii). Pub. L. 116-142, §2(a), inserted "minimum maturity of 5 years and a" before "maximum maturity".

Subsec. (a)(36)(L). Pub. L. 116-260, §339(b), inserted ", calculated on a non-compounding, non-adjustable basis" after "4 percent".

Subsec. (a)(36)(M). Pub. L. 116-260, §304(b)(1)(C)(ii)(II)(aa), substituted "section 636m" for "section 9005" in two places.

Subsec. (a)(36)(M)(ii). Pub. L. 116-260, §338(a)(3)(A), substituted "The" for "During the covered period, the" in introductory provisions.

Subsec. (a)(36)(M)(ii)(II). Pub. L. 116-142, §3(c)(1), substituted ", including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 9005 of this title is remitted to the lender." for "for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year."

Subsec. (a)(36)(M)(iii). Pub. L. 116-260, §338(a)(3)(B), substituted "With" for "During the covered period, with".

Pub. L. 116-142, §3(c)(2), substituted ", including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 9005 of this title is remitted to the lender." for "for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1

year."

Subsec. (a)(36)(M)(v). Pub. L. 116-260, §304(b)(1)(C)(ii)(II)(bb), substituted "section 636m(a)" for "section 9005(a)".

Pub. L. 116-142, §3(c)(3), added cl. (v).

Subsec. (a)(36)(P)(i). Pub. L. 116-260, §340(a)(1), amended cl. (i) generally. Prior to amendment, text read as follows: "The Administrator shall reimburse a lender authorized to make a covered loan at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

"(I) 5 percent for loans of not more than \$350,000;

"(II) 3 percent for loans of more than \$350,000 and less than \$2,000,000; and

"(III) 1 percent for loans of not less than \$2,000,000."

Subsec. (a)(36)(P)(ii). Pub. L. 116-260, §340(b)(1), inserted at end "If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent."

Subsec. (a)(36)(P)(iii). Pub. L. 116-260, §340(a)(2), amended cl. (iii) generally. Prior to amendment, text read as follows: "A reimbursement described in clause (i) shall be made not later than 5 days after the disbursement of the covered loan."

Subsec. (a)(36)(Q). Pub. L. 116-260, §341, which directed striking out "during the period beginning on January 31, 2020, and ending on the date on which covered loans are made available", which appeared after "loan made under subsection (b)(2)", was executed by striking out text containing "2020 and" instead of "2020, and", to reflect the probable intent of Congress.

Subsec. (a)(36)(S). Pub. L. 116-139, §101(d)(2), added subpar. (S).

Subsec. (a)(36)(T). Pub. L. 116-260, §310(a)(1), added subpar. (T).

Subsec. (a)(36)(U). Pub. L. 116-260, §310(b), added subpar. (U).

Subsec. (a)(36)(V). Pub. L. 116-260, §313(a)(2), added subpar. (V).

Subsec. (a)(37). Pub. L. 116-260, §311(a), added par. (37).

Subsec. (b)(2). Pub. L. 116-136, §1110(f)(7), inserted ": *Provided further*, That for purposes of subparagraph (D), the Administrator shall deem that such an emergency affects each State or subdivision thereof (including counties), and that each State or subdivision has sufficient economic damage to small business concerns to qualify for assistance under this paragraph and the Administrator shall accept applications for such assistance immediately" before period at end of concluding provisions.

Subsec. (b)(2)(D). Pub. L. 116-136, §1110(f)(1)-(3), (5), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 116-136, §1110(f)(4), (6), redesignated subpar. (D) as (E) and substituted "(C), or (D)" for "or (C)"; "disaster or emergency declaration" for "disaster declaration" in two places; "disaster or emergency has occurred" for "disaster has occurred"; "such disaster or emergency" for "such disaster"; and "disaster- or emergency-stricken" for "disaster stricken".

Subsec. (m)(3)(C). Pub. L. 116-260, §329(a)(2), substituted "\$7,000,000" for "\$10,000,000" and "\$3,000,000" for "\$4,500,000".

Pub. L. 116-260, §329(a)(1)(A), substituted "\$10,000,000 (in the aggregate)" for "and \$6,000,000" and inserted before period at end ", and \$4,500,000 in any of those remaining years".

Subsec. (m)(4)(A). Pub. L. 116-260, §329(a)(1)(B)(i), substituted "subparagraphs (C) and (G)" for "subparagraph (C)" in two places.

Subsec. (m)(4)(C)(i). Pub. L. 116-260, §329(a)(1)(B)(ii), amended cl. (i) generally. Prior to amendment, text read as follows: "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)."

Subsec. (m)(4)(G). Pub. L. 116-260, §329(a)(1)(B)(iii), added subpar. (G).

Subsec. (m)(11)(C)(ii). Pub. L. 116-260, §329(a)(1)(C)(i), which directed amendment of cl. (ii) by striking all after the semicolon and inserting "and", could not be executed because a semicolon did not appear.

Subsec. (m)(11)(D). Pub. L. 116-260, §329(a)(1)(C)(ii), which directed amendment of par. (11) "by striking all after subparagraph (C) and inserting" subpar. (D), was executed by adding subpar. (D) after subpar. (C), to reflect the probable intent of Congress.

2019—Subsec. (b)(3)(A)(i), (ii). Pub. L. 116-92, §877(a)(1)(A), added cl. (i), redesignated former cl. (i) as (ii) and inserted "and" at end, and struck out former cl. (ii) which defined the term "period of military conflict".

Subsec. (b)(3)(B). Pub. L. 116-92, §877(a)(1)(B), substituted "being ordered to perform active service for a

period of more than 30 consecutive days" for "being ordered to active military duty during a period of military conflict".

Subsec. (b)(3)(C). Pub. L. 116–92, §877(a)(1)(C), substituted "active service" for "active duty" in two places.

Subsec. (b)(3)(G)(ii)(II). Pub. L. 116–92, §877(a)(1)(D), substituted "active service" for "active duty".

Subsec. (n). Pub. L. 116–92, §877(a)(2), substituted "active service" for "active duty" in heading and in two places in each of pars. (1)(D) and (2)(B), and in par. (1), added subpar. (A), redesignated former subpars. (A) and (B) as (B) and (C), respectively, substituted "ordered to perform active service for a period of more than 30 consecutive days" for "ordered to active duty during a period of military conflict" in subpar. (B) as redesignated, and struck out former subpar. (C) which defined the term "period of military conflict".

2018—Subsec. (a)(1)(A)(i). Pub. L. 115–189 inserted "The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain credit elsewhere." before "No financial assistance".

Subsec. (a)(15)(A). Pub. L. 115–232, §862(b)(1)(A)(i), substituted "this subsection—" for "this subsection", inserted cl. (i) designation before "to qualified employee trusts" and ", and for any transaction costs associated with purchasing," after "purchasing", substituted "; and" for period at end, and added cl. (ii).

Subsec. (a)(15)(B). Pub. L. 115–232, §862(b)(1)(A)(ii)(I), inserted "or by the small business concern" after "the trustee of such trust" in introductory provisions.

Subsec. (a)(15)(B)(iv). Pub. L. 115–232, §862(b)(1)(A)(ii)(II)–(IV), added cl. (iv).

Subsec. (a)(15)(E). Pub. L. 115–232, §862(f), substituted "Administration, which shall include—" for "Administration." and added cls. (i) to (iii).

Subsec. (a)(15)(F), (G). Pub. L. 115–232, §862(b)(1)(A)(iii), added subpars. (F) and (G).

Subsec. (a)(29). Pub. L. 115–370 redesignated introductory provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and realigned margins, in cl. (i), substituted ", if such loan is in an amount greater than the Federal banking regulator appraisal threshold" for "for more than \$250,000", in cl. (ii), substituted ", if such loan is in an amount equal to or less than the Federal banking regulator appraisal threshold" for "\$250,000 or less", and added subpar. (B).

Subsec. (a)(35). Pub. L. 115–232, §862(b)(1)(B), added par. (35).

Subsec. (j)(13)(F)(iii). Pub. L. 115–232, §861(c), added cl. (iii).

Subsec. (m)(3)(C). Pub. L. 115–232, §853(b), substituted "\$6,000,000" for "\$5,000,000".

Subsec. (m)(4)(E). Pub. L. 115–141 substituted "50 percent" for "25 percent" in cls. (i) and (ii).

2015—Subsec. (a)(1)(A). Pub. L. 114–38, §4(b)(1), designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii)

Subsec. (a)(1)(C). Pub. L. 114–38, §4(b)(2), added subpar. (C).

Subsec. (a)(31)(A). Pub. L. 114–88, §2106(1), added cl. (i) and redesignated former cls. (i) to (iii) as (ii) to (iv), respectively.

Subsec. (a)(31)(G). Pub. L. 114–88, §2, added subpar. (G).

Subsec. (a)(31)(H). Pub. L. 114–88, §2106(2), added subpar. (H).

Subsec. (b)(1)(A). Pub. L. 114–88, §1102, substituted "mitigating measures, including—" and text of cls. (i) to (iii) for "mitigating measures, including, but not limited to, construction of retaining walls and sea walls, grading and contouring land, relocating utilities and modifying structures".

Subsec. (b)(10). Pub. L. 114–88, §1103, added par. (10).

Subsec. (b)(11). Pub. L. 114–88, §1104, added par. (11).

Subsec. (b)(12). Pub. L. 114–88, §2101, added par. (12).

Subsec. (b)(13). Pub. L. 114–88, §2107, added par. (13).

Subsec. (b)(14). Pub. L. 114–88, §2201, added par. (14).

Subsec. (b)(15). Pub. L. 114–88, §2301(a), added par. (15).

Subsec. (d)(6). Pub. L. 114–88, §2109, inserted ": *Provided further*, That the Administrator, in obtaining the best available collateral for a loan of not more than \$200,000 under paragraph (1) or (2) of subsection (b) relating to damage to or destruction of the property of, or economic injury to, a small business concern, shall not require the owner of the small business concern to use the primary residence of the owner as collateral if the Administrator determines that the owner has other assets of equal quality and with a value equal to or greater than the amount of the loan that could be used as collateral for the loan: *Provided further*, That nothing in the preceding proviso may be construed to reduce the amount of collateral required by the Administrator in connection with a loan described in the preceding proviso or to modify the standards used to evaluate the quality (rather than the type) of such collateral" after "which are made under paragraph (1) of subsection (b)".

Pub. L. 114–88, §2102(b), substituted "\$14,000" for "\$25,000" and "in the event of a major disaster" for "in

the event of a disaster".

Pub. L. 114-88, §2102(a), substituted "\$25,000" for "\$14,000" and "in the event of a disaster" for "in the event of a major disaster".

Subsec. (d)(8). Pub. L. 114-88, §1101, added par. (8).

Subsec. (j)(10)(D)(i). Pub. L. 114-92 struck out "The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the National Defense Authorization Act for Fiscal Year 2013 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification." after "to assist such Program Participant."

Subsec. (j)(13)(F). Pub. L. 114-88, §2105, designated existing provisions as cl. (i) and added cl. (ii).

2014—Subsec. (j)(13)(E). Pub. L. 113-128 substituted "an institution eligible to provide skills training or upgrading under title I of the Workforce Innovation and Opportunity Act" for "an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998".

2013—Subsec. (j)(10)(D)(i). Pub. L. 112-239 inserted "The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the National Defense Authorization Act for Fiscal Year 2013 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification." after "to assist such Program Participant."

2011—Subsec. (d)(5)(D). Pub. L. 112-74 substituted "7 years" for "three years".

2010—Subsec. (a)(2)(A). Pub. L. 111-240, §1206(a)(2)(A), substituted "subparagraphs (B), (D), and (E)" for "subparagraph (B)" in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 111-240, §1111(b)(1)(A), substituted "75 percent" for "90 percent".

Pub. L. 111-240, §1111(a)(1)(A), substituted "90 percent" for "75 percent".

Subsec. (a)(2)(A)(ii). Pub. L. 111-240, §1111(b)(1)(B), substituted "85 percent" for "90 percent".

Pub. L. 111-240, §1111(a)(1)(B), substituted "90 percent" for "85 percent".

Subsec. (a)(2)(C)(ii), (iii). Pub. L. 111-240, §1206(e), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(2)(D). Pub. L. 111-240, §1206(d)(1), substituted "be" for "not exceed".

Pub. L. 111-240, §1206(a)(2)(B), substituted "In" for "Notwithstanding subparagraph (A), in".

Subsec. (a)(2)(E). Pub. L. 111-240, §1206(a)(2)(C), added subpar. (E).

Subsec. (a)(3)(A). Pub. L. 111-240, §1111(b)(2), substituted "\$3,750,000" for "\$4,500,000".

Pub. L. 111-240, §1111(a)(2), substituted "\$4,500,000 (or if the gross loan amount would exceed \$5,000,000)" for "\$1,500,000 (or if the gross loan amount would exceed \$2,000,000)".

Subsec. (a)(3)(B). Pub. L. 111-240, §1206(a)(1), substituted "\$4,500,000 (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000" for "\$1,750,000, of which not more than \$1,250,000".

Subsec. (a)(14). Pub. L. 111-240, §1206(d)(2), inserted par. (14) and subpar. (A) headings, substituted "The Administrator" for "The Administration" in subpar. (A), added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), respectively, and inserted headings, and substituted "The Administrator" for "The Administration" in subpar. (D) as redesignated.

Subsec. (a)(16)(A). Pub. L. 111-240, §1206(b)(1), struck out "in" before dash at end of introductory provisions.

Subsec. (a)(16)(A)(i). Pub. L. 111-240, §1206(b)(2), inserted "in" after cl. (i) designation and struck out "or" at end.

Subsec. (a)(16)(A)(ii). Pub. L. 111-240, §1206(b)(3), inserted "in" after cl. (ii) designation and substituted ", including any debt that qualifies for refinancing under any other provision of this subsection; or" for period at end.

Subsec. (a)(16)(A)(iii). Pub. L. 111-240, §1206(b)(4), added cl. (iii).

Subsec. (a)(16)(B). Pub. L. 111-240, §1206(c), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Except as provided in clause (ii), each loan" for "Each loan", and added cl. (ii).

Subsec. (a)(16)(F). Pub. L. 111-240, §1206(g), added subpar. (F).

Subsec. (a)(31)(D). Pub. L. 111-240, §1135(b), substituted "\$350,000" for "\$1,000,000".

Pub. L. 111-240, §1135(a), substituted "\$1,000,000" for "\$350,000".

Subsec. (a)(32), (33). Pub. L. 111-240, §1133(a)(1), redesignated par. (32), relating to increased veteran participation program, as (33).

Subsec. (a)(34). Pub. L. 111-240, §1133(b), redesignated par. (35) as (34) and struck out former par. (34) which related to floor plan financing program.

Pub. L. 111-240, §1133(a)(2), added par. (34).

Subsec. (a)(35). Pub. L. 111-240, §1206(f), added par. (35).

Pub. L. 111-240, §1133(b)(2), redesignated par. (35) as (34).

Subsec. (l). Pub. L. 111-240, §1131(a), added subsec. (l) and struck out former subsec. (l) which read "[RESERVED]".

Subsec. (m)(1)(B)(iii). Pub. L. 111-240, §1113(1), substituted "\$50,000" for "\$35,000".

Subsec. (m)(3)(B). Pub. L. 111-240, §1401(c)(1)(A), struck out cl. (i) designation and heading, substituted "As" for "Subject to clause (ii), as", and struck out cl. (ii) relating to waiver of non-Federal share.

Pub. L. 111-240, §1401(a)(1), designated existing provisions as cl. (i) and inserted cl. (i) heading, substituted "Subject to clause (ii), as a condition" for "As a condition" and "the Administrator" for "the Administration", and added cl. (ii).

Subsec. (m)(3)(C). Pub. L. 111-240, §1113(2)(A), substituted "\$5,000,000" for "\$3,500,000".

Subsec. (m)(3)(E). Pub. L. 111-240, §1113(2)(B), substituted "\$50,000" for "\$35,000" in two places.

Subsec. (m)(4)(B). Pub. L. 111-240, §1401(c)(1)(B), struck out cl. (i) designation and heading, substituted "As" for "Subject to clause (ii), as", and struck out cl. (ii) relating to waiver of non-Federal share.

Pub. L. 111-240, §1401(a)(2), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Subject to clause (ii), as a condition of a grant made under subparagraph (A), the Administrator shall require" for "As a condition of any grant made under subparagraph (A), the Administration shall require", and added cl. (ii).

Subsec. (m)(11)(B). Pub. L. 111-240, §1113(3), substituted "\$50,000" for "\$35,000".

2008—Subsec. (a)(32). Pub. L. 110-186, §208, added par. (32) relating to increased veteran participation program.

Subsec. (b). Pub. L. 110-246, §12078(c)(2), in concluding provisions substituted "paragraphs (1) and (2)" for "paragraphs (1), (2), and (4)" and "paragraph (1) (2)" for "paragraph (1), (2), or (4)".

Pub. L. 110-246, §12078(c)(1), substituted "the Administration" for "the, Administration" in introductory provisions.

Pub. L. 110-246, §12068(b)(2)(B), which directed amendment of "the undesignated matter following paragraph (3)" by substituting "Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b)" for "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)," was executed by making the substitution for "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)," in concluding provisions after par. (6), to reflect the probable intent of Congress and the addition of pars. (4) to (6) by Pub. L. 110-246, §§12063(a), 12066(a). See below.

Pub. L. 110-246, §12068(b)(2)(A), which directed amendment of "the undesignated matter following paragraph (3)" by substituting "That the provisions of paragraph (1) of subsection (d)" for "That the provisions of paragraph (1) of subsection (c)", was executed by making the substitution in concluding provisions after par. (6), to reflect the probable intent of Congress and the addition of pars. (4) to (6) by Pub. L. 110-246, §§12063(a), 12066(a). See below.

Subsec. (b)(1)(A). Pub. L. 110-246, §12078(b)(1), inserted "of the aggregate costs of such damage or destruction (whether or not compensated for by insurance or otherwise)" after "20 per centum".

Subsec. (b)(2). Pub. L. 110-246, §12061(a)(1), in introductory provisions inserted ", private nonprofit organization," after "small business concern" and ", the organization," after "the concern".

Subsec. (b)(2)(A). Pub. L. 110-246, §12063(c)(2), substituted "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)" for "Disaster Relief and Emergency Assistance Act".

Subsec. (b)(2)(D). Pub. L. 110-246, §12061(a)(2), inserted ", private nonprofit organizations," after "small business concerns".

Subsec. (b)(3)(C). Pub. L. 110-186, §201(a), substituted "1 year" for "90 days" and inserted at end "The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year."

Subsec. (b)(3)(E). Pub. L. 110-246, §12077, inserted ", or have become due to changed economic circumstances," after "constitutes".

Subsec. (b)(3)(G), (H). Pub. L. 110-186, §§203, 204, added subpars. (G) and (H).

Subsec. (b)(4), (5). Pub. L. 110-246, §12063(a), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 110-246, §12066(a), added par. (6).

Subsec. (b)(7). Pub. L. 110-246, §12074(a), added par. (7).

Subsec. (b)(8). Pub. L. 110-246, §12078(a), added par. (8).

Subsec. (b)(9). Pub. L. 110-246, §12081, added par. (9).

Subsec. (b)(9)(C), (D). Pub. L. 110-246, §12082, added subpars. (C) and (D).

Subsec. (c). Pub. L. 110-246, §12083(a), added subsec. (c).

Pub. L. 110-246, §12068(a)(1), redesignated subsec. (c) as (d).

Subsec. (c)(5)(C). Pub. L. 110-246, §12061(b), inserted ", private nonprofit organization," after "business".

Subsec. (c)(6). Pub. L. 110-246, §12065, substituted "\$14,000 or less (or such higher amount as the Administrator determines appropriate in the event of a major disaster)" for "\$10,000 or less".

Subsecs. (d) to (f). Pub. L. 110-246, §12068(a), redesignated subsecs. (c) and (d) as (d) and (e), respectively, and added subsec. (f).

Subsec. (g). Pub. L. 110-246, §12070, added subsec. (g).

2007—Subsec. (a)(31)(F). Pub. L. 110-140, §1201, added subpar. (F).

Subsec. (a)(32). Pub. L. 110-140, §1202, added par. (32).

2006—Subsec. (b)(2). Pub. L. 109-163, §845(a)(2)(A), in introductory provisions, inserted "(including drought), with respect to both farm-related and nonfarm-related small business concerns," before "if the Administration".

Subsec. (b)(2)(B). Pub. L. 109-163, §845(a)(2)(B), substituted "section 1961 of title 7, in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph" for "the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961)".

Subsec. (b)(2)(D). Pub. L. 109-163, §845(c), substituted "Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore, and may" for "Upon receipt of such certification, the Administration may".

2004—Subsec. (a)(3)(A). Pub. L. 108-447, §103(a), substituted "\$1,500,000" for "\$1,000,000".

Subsec. (a)(3)(B). Pub. L. 108-447, §107(b), substituted "\$1,750,000" for "\$1,250,000" and "\$1,250,000" for "\$750,000".

Subsec. (a)(16). Pub. L. 108-447, §107(a), inserted heading and amended par. (16) generally. Prior to amendment, par. (16) provided that the Administration could guarantee loans to assist any eligible small business concern in an industry engaged in or adversely affected by international trade in the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade.

Subsec. (a)(18)(A). Pub. L. 108-447, §102(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

"(i) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

"(ii) A guarantee fee equal to 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

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

Subsec. (a)(18)(C). Pub. L. 108-447, §102(b), struck out heading and text of subpar. (C). Text read as follows: "With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

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

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

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

Subsec. (a)(23). Pub. L. 108-447, §102(c)(1), substituted "Yearly" for "Annual" in heading.

Subsec. (a)(23)(A). Pub. L. 108-447, §102(c)(2), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: "With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the

deferred participation share of the loan. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan."

Subsec. (a)(23)(B). Pub. L. 108-447, §102(c)(3), substituted "yearly" for "annual".

Subsec. (a)(23)(C). Pub. L. 108-447, §102(c)(4), added subpar. (C).

Subsec. (a)(31). Pub. L. 108-447, §101(a), added par. (31).

2001—Subsec. (a)(18)(C). Pub. L. 107-100, §6(a)(1), added subpar. (C).

Subsec. (a)(23)(A). Pub. L. 107-100, §6(a)(2), inserted at end "With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan."

2000—Subsec. (a)(2)(A)(i). Pub. L. 106-554, §1(a)(9) [title II, §202(1)], substituted "\$150,000" for "\$100,000".

Subsec. (a)(2)(A)(ii). Pub. L. 106-554, §1(a)(9) [title II, §202(2)], substituted "85 percent" for "80 percent" and "\$150,000" for "\$100,000".

Subsec. (a)(3)(A). Pub. L. 106-554, §1(a)(9) [title II, §203], substituted "\$1,000,000 (or if the gross loan amount would exceed \$2,000,000)," for "\$750,000,".

Subsec. (a)(4). Pub. L. 106-554, §1(a)(9) [title II, §205(1)], inserted heading and struck out former heading "Interest rates and fees.—".

Subsec. (a)(4)(B)(iii). Pub. L. 106-554, §1(a)(9) [title II, §204], added cl. (iii).

Subsec. (a)(4)(C). Pub. L. 106-554, §1(a)(9) [title II, §205(2)], added subpar. (C).

Subsec. (a)(18). Pub. L. 106-554, §1(a)(9) [title II, §206], amended heading and text of par. (18) generally, substituting present provisions for provisions which had authorized guarantee fee in an amount equal to sum of 3 percent of amount of deferred participation share of loan that was less than or equal to \$250,000, if deferred participation share of loan exceeded \$250,000, plus 3.5 percent of difference between \$500,000 or total deferred participation share of loan, whichever was less, and \$250,000, plus, if deferred participation share of loan exceeded \$500,000, 3.875 percent of difference between total deferred participation share of loan and \$500,000, and set forth provisions relating to exception for certain loans.

Subsec. (a)(28). Pub. L. 106-554, §1(a)(9) [title II, §207], added par. (28).

Subsec. (a)(29). Pub. L. 106-554, §1(a)(9) [title II, §208(a)], added par. (29).

Subsec. (a)(30). Pub. L. 106-554, §1(a)(9) [title VIII, §802(a)], added par. (30).

Subsec. (m)(1)(A)(iii)(I). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(2)], substituted "\$10,000" for "\$7,500".

Subsec. (m)(1)(B)(iii). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(1)], substituted "\$35,000" for "\$25,000".

Subsec. (m)(3)(A)(ii). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(2)], substituted "\$10,000" for "\$7,500".

Subsec. (m)(3)(E). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(1), (3)], substituted "\$20,000" for "\$15,000" and "\$35,000" for "\$25,000" in two places.

Subsec. (m)(4)(C)(i). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(2)], which directed the amendment of subsec. (m)(4)(C)(i)(II) by substituting "\$10,000" for "\$7,500", was executed by making the substitution in subsec. (m)(4)(C)(i) to reflect the probable intent of Congress and the termination of the temporary amendment by Pub. L. 103-403, §208(a)(2), (c). See 1994 Amendment note and Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(5)(A). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(4)], substituted "55 grants" for "25 grants" and "\$200,000" for "\$125,000".

Subsec. (m)(6)(B). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(5)], substituted "\$15,000" for "\$10,000".

Subsec. (m)(7)(A). Pub. L. 106-554, §1(a)(9) [title II, §210(a)(6)], added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: "During the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 200 microloan programs."

Subsec. (m)(11)(B). Pub. L. 106-554, §1(a)(9) [title II, §210(b)], substituted "\$35,000" for "\$25,000".

1999—Subsec. (a)(10). Pub. L. 106-50, §401(b), inserted "guaranteed" after "provide" and ", including service-disabled veterans," after "handicapped individual".

Subsec. (a)(21)(A)(ii). Pub. L. 106-50, §404, inserted "or a veteran" after "qualified individual".

Subsec. (a)(27). Pub. L. 106-8, §3(a), (c), temporarily added par. (27) relating to Year 2000 computer problem program. See Effective and Termination Dates of 1999 Amendments note below.

Subsec. (b)(1)(C). Pub. L. 106-24, §1(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 106-50, §402(b), added par. (3).

Subsec. (m)(1)(A)(i). Pub. L. 106-50, §403, inserted "veteran (within the meaning of such term under section 632(q) of this title)," after "low-income,".

Subsec. (m)(3)(D). Pub. L. 106-22, §3, struck out subpar. (D) heading and amended text generally. Prior to amendment, text read as follows: "The Administration shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid. The Administration shall require the loan loss reserve fund to be maintained—

"(i) during the initial 5 years of the intermediary's participation in the program under this subsection, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and

"(ii) in each year of participation thereafter, at a level equal to not more than the greater of—

"(I) 2 times an amount reflecting the total losses of the intermediary as a result of participation in the program under this subsection, as determined by the Administrator on a case-by-case basis; or

"(II) 10 percent of the outstanding balance of the notes receivable owed to the intermediary."

Subsec. (m)(7)(B). Pub. L. 106-22, §2(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: "During any fiscal year, a State shall not receive new loan funds from the Administration that exceed 125 percent of the State's pro rata share of the microloan program authorization during such fiscal year, such share to be based on the population of the State, as compared to the total population of the United States. If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State."

Subsec. (m)(8). Pub. L. 106-22, §2(2), inserted "and providing funding to intermediaries" after "program applicants" and "and provide funding to" after "shall select".

Subsec. (n). Pub. L. 106-50, §402(a), added subsec. (n).

1998—Subsec. (j)(13)(E). Pub. L. 105-277, §101(f) [title VIII, §405(f)(9)], struck out "the Job Training Partnership Act or" before "title I of the Workforce" in introductory provisions.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(10)], substituted "the Job Training Partnership Act or title I of the Workforce Investment Act of 1998" for "the Job Training Partnership Act (29 U.S.C. 1501 et seq.)".

1997—Subsec. (a). Pub. L. 105-135, §231(1), inserted heading.

Subsec. (a)(1). Pub. L. 105-135, §231(2), inserted heading, designated existing provisions as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (a)(8). Pub. L. 105-135, §706, added par. (8).

Subsec. (m). Pub. L. 105-135, §201(c), struck out "Demonstration" and "demonstration" wherever appearing in heading and text.

Subsec. (m)(1)(A)(iv). Pub. L. 105-135, §202(a)(1), added cl. (iv).

Subsec. (m)(3)(C). Pub. L. 105-135, §201(a), substituted "\$3,500,000" for "\$2,500,000".

Subsec. (m)(3)(D)(i), (ii). Pub. L. 105-135, §201(b), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

"(i) in the first year of the intermediary's participation in the demonstration program, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and

"(ii) in each year of participation thereafter, at a level reflecting the intermediary's total losses as a result of participation in the demonstration program, as determined by the Administration on a case-by-case basis, but in no case shall the required level exceed 15 percent of the outstanding balance of the notes receivable owed to the intermediary under the program."

Subsec. (m)(4)(E). Pub. L. 105-135, §201(d)(1), designated existing provisions as cl. (i), inserted heading, substituted "25 percent" for "15 percent", and added cl. (ii).

Subsec. (m)(4)(F). Pub. L. 105-135, §202(a)(2), added subpar. (F).

Subsec. (m)(5)(A). Pub. L. 105-135, §201(d)(2), struck out "in each of the 5 years of the demonstration program established under this subsection," after "requirements of subparagraph (B)," and substituted "annually" for "for terms of up to 5 years".

Subsec. (m)(6)(E). Pub. L. 105-135, §202(a)(3), added subpar. (E).

Subsec. (m)(9). Pub. L. 105-135, §202(a)(4)(A), substituted "Grants for management, marketing, technical assistance, and related services" for "Technical assistance for intermediaries" in heading.

Subsec. (m)(9)(C). Pub. L. 105-135, §202(a)(4)(B), added subpar. (C).

Subsec. (m)(12). Pub. L. 105-135, §201(c)(4), substituted "1998 through 2000" for "1995 through 1997".

Subsec. (m)(13). Pub. L. 105-135, §202(a)(5), added par. (13).

1996—Subsec. (a)(2)(C)(ii)(II). Pub. L. 104-208, §103(a), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "authority to service and liquidate such loans."

Subsec. (a)(2)(D). Pub. L. 104-208, §111, added subpar. (D).

Subsec. (a)(4). Pub. L. 104-208, §103(f), inserted par. (4) heading, designated existing text as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (a)(19)(C). Pub. L. 104-208, §103(b), added subpar. (C).

Subsec. (a)(25). Pub. L. 104-208, §103(c), added par. (25).

Subsec. (a)(26). Pub. L. 104-208, §103(d), added par. (26).

Subsec. (d). Pub. L. 104-208, §107(a), struck out "(1)" before "The Administration" and struck out par. (2) which read as follows: "The Administration is authorized to hold seminars throughout the Nation to make potential applicants aware of the opportunities available under this subsection and related government energy programs, and to make grants to qualified organizations to provide training seminars for small business concerns regarding practical and easily implemented methods for design, manufacture, installation, and servicing of equipment and for providing services listed in paragraph (1) of this subsection, except that recipients of loans made pursuant to this subsection shall not subsequently be eligible for such grants."

Subsec. (e). Pub. L. 104-208, §107(b), amended subsec. (e) generally, substituting "(e) [RESERVED]" for prior provisions of subsec. (e) which read as follows: "The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition from imported articles, but only if (1) an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962, (2) the Secretary has referred such proposal to the Administration under that Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the Secretary's certification is in force at the time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of sections 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 as though such loans had been made under section 314 of that Act."

Subsec. (f). Pub. L. 104-208, §107(c), amended subsec. (f) generally, substituting "(f) [RESERVED]" for prior provisions of subsec. (f) which read as follows: "In the administration of the disaster loan program under subsection (b)(1) of this section, in the case of property loss or damage as a result of a disaster which is a 'major disaster' as defined in section 102(2) of the Disaster Relief and Emergency Assistance Act, the Small Business Administration, to the extent such loss or damage is not compensated for by insurance or otherwise, may lend to a privately owned college or university without regard to whether the required financial assistance is otherwise available from private sources, and may waive interest payments and defer principal payments on such a loan for the first three years of the term of the loan."

Subsec. (l). Pub. L. 104-208, §107(c), amended subsec. (l) generally, substituting "(l) [RESERVED]" for prior provisions of subsec. (l) which consisted of 9 pars. authorizing loans to small business concerns for solar energy and energy conservation measures.

Subsec. (m)(7)(B). Pub. L. 104-208, §105, inserted at end "If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State."

1995—Subsec. (a)(2). Pub. L. 104-36, §2, amended par. (2) generally. Prior to amendment, par. (2) related to percentage levels in loan participation agreements.

Subsec. (a)(18). Pub. L. 104-36, §3(a), amended par. (18) generally. Prior to amendment, par. (18) read as follows: "The Administration shall collect a guarantee fee equal to two percent of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less. The fee shall be payable by the participating lending institution and may be charged to the borrower."

Subsec. (a)(19)(B). Pub. L. 104-36, §3(b)(1), substituted "shall develop" for "shall (i) develop" and struck out at end ", and (ii) allow such lenders to retain one-half of the fee collected pursuant to subsection (a)(18) of this section on such loans. A participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed \$50,000 unless the amount in excess of \$50,000 is an amount not approved under the provisions of this paragraph".

Subsec. (a)(19)(C). Pub. L. 104-36, §3(b)(2), struck out subpar. (C) which read as follows: "In order to encourage lending institutions and other entities making loans authorized under this subsection to provide loans to small business loan applicants located in rural areas, such lenders shall be permitted to retain one-half of the fee collected pursuant to paragraph (18) on loans of less than \$75,000. A participating lender may not retain any fee pursuant to this subparagraph if the amount committed and outstanding to the applicant would exceed \$75,000 unless the amount in excess of \$75,000 is an amount not approved under the provisions of this subparagraph. This subparagraph shall cease to be effective on October 1, 1995."

Subsec. (a)(23). Pub. L. 104-36, §4(a), added par. (23).

Subsec. (a)(24). Pub. L. 104-36, §5, added par. (24).

1994—Subsec. (a)(2)(B)(iv). Pub. L. 103–403, §211, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "not less than 85 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16)."

Subsec. (a)(3)(B). Pub. L. 103–403, §210, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed \$1,000,000, such amount to be in addition to any financing solely for working capital, supplies, or revolving lines of credit for export purposes up to a maximum of \$250,000; and".

Subsec. (a)(14)(A). Pub. L. 103–403, §209, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The Administration under this subsection may provide extensions and revolving lines of credit for export purposes and financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. No such extension or revolving line of credit may be made for a period or periods exceeding 3 years. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable."

Subsec. (a)(21)(A). Pub. L. 103–403, §605(a), inserted "on a guaranteed basis" before "under the authority".

Subsec. (a)(21)(E). Pub. L. 103–403, §603, added subpar. (E).

Subsec. (m)(3)(C). Pub. L. 103–403, §206, substituted "\$2,500,000" for "\$1,250,000".

Subsec. (m)(4)(B). Pub. L. 103–403, §208(a)(1), (c), temporarily inserted "except for a grant made to an intermediary that provides not less than 50 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area," after "under subparagraph (A),". See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(4)(C)(i). Pub. L. 103–403, §208(a)(2), (c), temporarily added cl. (i) which read as follows: "In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

"(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

"(II) the intermediary has a portfolio of loans made under this subsection that averages not more than \$7,500 during the period of the intermediary's participation in the program."

See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(4)(E). Pub. L. 103–403, §207, added subpar. (E).

Subsec. (m)(7). Pub. L. 103–403, §204, amended par. (7) generally, substituting present provisions for former provisions relating to program funding, which provided for: in subpar. (A), first year programs; in subpar. (B), expanded programs; and in subpar. (C), State limitations.

Subsec. (m)(8). Pub. L. 103–403, §205, amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "In funding microloan programs, the Administration shall ensure that at least one-half of the programs funded under this subsection will provide microloans to small business concerns located in rural areas."

Subsec. (m)(9)(B). Pub. L. 103–403, §604, inserted "and loan guarantees" after "for loans" and "and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing." after "experienced microlending organizations".

Subsec. (m)(11)(A)(v). Pub. L. 103–403, §202, added cl. (v).

Subsec. (m)(11)(D). Pub. L. 103–403, §208(b), (c), temporarily added subpar. (D) which read as follows: "the term 'economically distressed area', as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.". See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(12). Pub. L. 103–403, §201, added par. (12).

1993—Subsec. (a)(2). Pub. L. 103–81, §5(a)(2)–(4), in concluding provisions, substituted "less than the above specified percentums" for "less than 85 percent under subparagraph (B)" and "not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the" for "not less than 80 percent, except upon" and inserted after third sentence "The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, which is made applicable to other loan guarantees under subsection (a) of this section."

Subsec. (a)(2)(B). Pub. L. 103–81, §5(a)(1), struck out "and" at end of cl. (i), added cls. (ii) and (iii), and redesignated former cl. (ii) as (iv).

Subsec. (a)(22). Pub. L. 103–81, §4, added par. (22).

Subsec. (m)(1)(B)(iii). Pub. L. 103-81, §8(1), substituted "\$25,000" for "\$15,000".

Subsec. (m)(5)(A). Pub. L. 103-81, §8(2), substituted "25 grants for terms of up to 5 years" for "6 grants".

Subsec. (m)(9)(B). Pub. L. 103-81, §8(3), substituted "7 percent" for "3 percent".

1992—Subsec. (a)(4). Pub. L. 102-366, §104, substituted "Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection" for "The rate of interest on financings made on a deferred basis shall be legal and reasonable but".

Subsec. (a)(21). Pub. L. 102-366, §211, added par. (21).

Subsec. (m)(1)(A)(i). Pub. L. 102-366, §113(a)(1)(A), amended cl. (i) generally, substituting "and business owners and other such individuals" for ", business owners, and other individuals".

Subsec. (m)(1)(A)(iii)(I). Pub. L. 102-366, §113(a)(1)(B), inserted ", particularly loans in amounts averaging not more than \$7,500," after "small-scale loans".

Subsec. (m)(3)(A). Pub. L. 102-366, §113(a)(2), designated existing provisions as cl. (i) and inserted heading, redesignated cls. (i) to (viii) as subcls. (I) to (VIII), respectively, substituted "economic, poverty, and unemployment" for "economic and unemployment" in subcl. (III), amended subcl. (VIII) generally, and added cl. (ii). Prior to amendment, subcl. (VIII) read as follows: "any plan to involve private sector lenders in assisting selected small business concerns."

Subsec. (m)(3)(F). Pub. L. 102-366, §113(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "Loans made by the Administration under this subsection shall be for a term of 10 years and at an interest rate equal to the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent."

Subsec. (m)(4)(A). Pub. L. 102-366, §113(a)(4)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "Except as otherwise provided in subparagraph (C) and subject to the requirements of subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. In the first and second years of an intermediary's program participation, each intermediary meeting the requirement of subparagraph (B) may receive a grant of not more than 20 percent of the total outstanding balance of loans made to it under this subsection. In the third and subsequent years of an intermediary's program participation, each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 10 percent of the total outstanding balance of loans made to it under this subsection."

Pub. L. 102-366, §113(a)(4)(A), substituted "Except as otherwise provided in subparagraph (C) and subject to" for "Subject to".

Subsec. (m)(4)(B). Pub. L. 102-366, §113(a)(4)(C), substituted "25 percent" for "one-half".

Subsec. (m)(4)(C), (D). Pub. L. 102-366, §113(a)(4)(D), added subpars. (C) and (D).

Subsec. (m)(5)(A). Pub. L. 102-366, §113(a)(5), substituted "6 grants" for "2 grants".

Subsec. (m)(6)(C). Pub. L. 102-366, §113(a)(6), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall be not more than 4 percentage points above the prime lending rate, as identified by the Administration and published in the Federal Register on a quarterly basis."

Subsec. (m)(7)(A). Pub. L. 102-564, §307(b)(1), inserted at end: "If, at the end of fiscal year 1992, the Administration has funded less than 50 microloan programs under this subparagraph, the Administration may, in fiscal year 1993, fund a number of additional microloan programs equal to the difference between 50 and the number of microloan programs actually funded in fiscal year 1992."

Pub. L. 102-366, §113(a)(7)(A), substituted "60 microloan programs" for "35 microloan programs".

Subsec. (m)(7)(B). Pub. L. 102-564, §307(b)(2), substituted "In addition to any microloan programs authorized to be funded in fiscal year 1993 in accordance with subparagraph (A), in the second" for "In the second".

Pub. L. 102-366, §113(a)(7)(B), substituted "50 additional" for "25 additional".

Subsec. (m)(7)(C)(i). Pub. L. 102-366, §113(a)(7)(C), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "be awarded more than 2 microloan programs in any year of the demonstration program;"

Subsec. (m)(7)(C)(ii), (iii). Pub. L. 102-366, §113(a)(7)(D), (E), substituted "\$1,500,000" for "\$1,000,000" in cl. (ii) and "\$2,500,000" for "\$1,500,000" in cl. (iii).

Subsec. (m)(9), (10). Pub. L. 102-366, §113(a)(8), (9), added par. (9) and redesignated former par. (9) as (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 102-564, §307(c), inserted "private," before "nonprofit" in subpar. (A)(ii).

Pub. L. 102-366, §113(a)(8), (10), redesignated par. (10) as (11) and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the term 'intermediary' means a private, nonprofit entity or a nonprofit community development corporation that seeks to borrow or has borrowed funds from the Small Business Administration to make microloans to small business concerns under this subsection;"

1991—Subsec. (a)(18). Pub. L. 102-140, §609(b), struck out "or a loan under paragraph (13)" after "one year or less".

Subsec. (a)(19)(B). Pub. L. 102-191 struck out "during fiscal years 1989, 1990, and 1991," after "small business loan applicants,"

Subsec. (m). Pub. L. 102-140, §609(h), added subsec. (m).

1990—Subsec. (a)(14)(A). Pub. L. 101-574, §202, struck out "pre-export" before "financing" and substituted "3 years" for "18 months".

Subsec. (a)(16)(A). Pub. L. 101-574, §245, struck out at end "The lender shall agree to sell the loan in the secondary market as authorized in sections 634(f) and 634(g) of this title within 180 days of the date of disbursement."

Subsec. (a)(19)(C). Pub. L. 101-574, §307, added subpar. (C).

Subsec. (j)(3)(A). Pub. L. 101-574, §242(1), struck out subpar. (A), which was previously struck out by Pub. L. 100-656, §505(h). See 1988 Amendment note below.

Subsec. (j)(3)(B). Pub. L. 101-574, §242(1), struck out subpar. (B) which read as follows: "The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph."

Subsec. (j)(8). Pub. L. 101-574, §242(2), struck out par. (8) which read as follows: "The General Accounting Office shall provide for an independent and continuing evaluation of programs under subsections (i) and (j) of this section and section 637(a) of this title, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General."

Subsec. (j)(10)(J)(ii). Pub. L. 101-574, §204(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "Except as provided under section 602 of the Business Opportunity Development Reform Act of 1988, no award shall be made pursuant to section 637(a) of this title to other than a small business concern."

Subsec. (j)(13)(D)(iii). Pub. L. 101-574, §206, substituted "October 1, 1994" for "October 1, 1992".

1989—Subsec. (a)(2). Pub. L. 101-162, title V, (1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be:

"(A) not less than 90 per centum of the balance of the financing outstanding at the time of disbursement if such financing does not exceed \$155,000; and

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

"(i) not less than 70 per centum nor more than 85 per centum of the financing outstanding at the time of disbursement if such financing exceeds \$155,000 but is less than \$714,285,

"(ii) less than 70 per centum of the financing outstanding at the time of disbursement if such financing exceeds \$714,285;

"(iii) not less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and is less than \$1,176,470; and

"(iv) less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and exceeds \$1,176,470;

Provided, That the Administration shall not use the per centum of guarantee requested as a criterion to establish priorities in approving guarantee requests nor shall the Administration reduce the per centum guaranteed to less than 85 per centum pursuant to subparagraph (B) other than by a determination made on each application: *Provided, further*, That the Administration may reduce its participation below the per centums stated in this paragraph if the lender requests the reduction under the preferred lenders program or any successor thereto, but any such reduction shall not exceed five points. As used in this sentence the term 'preferred lenders program' means a program under which, pursuant to a written agreement between the lender

and the Administration, the lender has been delegated (1) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (2) authority to service and liquidate such loans."

Subsec. (a)(19). Pub. L. 101-162, title V, (2), amended par. (19) generally. Prior to amendment, par. (19) read as follows: "During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the proviso in section 634(b)(7) of this title, the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantees program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of \$50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified loan form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to subsection (a)(16) of this section on such loans: *Provided*, That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed \$50,000 unless such excess amount was not approved under the provisions of this paragraph. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: *Provided further*, That any suspension or revocation of the designation shall not affect any outstanding guarantee: And, *provided further*, That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law."

Subsec. (a)(20)(C)(iv). Pub. L. 101-37, §9, inserted "is" before "amortized".

Subsec. (j)(10)(A)(i). Pub. L. 101-37, §5(a), substituted "which set forth" for "which sets forth".

Subsec. (j)(10)(D)(i). Pub. L. 101-37, §5(b)(1), substituted "Business Opportunity Specialist" for "business opportunity specialist".

Subsec. (j)(10)(D)(ii)(II). Pub. L. 101-37, §5(b)(2), substituted "the small business concern" for "small business concerns".

Subsec. (j)(10)(D)(iii). Pub. L. 101-37, §5(b)(3), inserted "relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title" after "subparagraph (I)".

Subsec. (j)(10)(D)(iv). Pub. L. 101-37, §5(b)(4), substituted "contract awards" for "contact awards".

Subsec. (j)(10)(D)(iv)(I). Pub. L. 101-37, §5(b)(5), inserted "relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title" after "subparagraph (I)".

Subsec. (j)(10)(E)(ii). Pub. L. 101-37, §7(a)(1), substituted "completes the period of Program participation as prescribed by paragraph (15)" for "participates in the Program for a period in excess of the time limits prescribed by paragraph (15)".

Subsec. (j)(10)(F). Pub. L. 101-37, §7(a)(2), struck out subpar. (F) appearing first, which read as follows: "For the purposes of this subsection and section 637(a) of this title, the terms 'terminated' or 'termination' shall mean the total denial".

Pub. L. 101-37, §7(a)(3), in subpar. (F) appearing second, inserted first sentence and struck out former first sentence which read as follows: "For the purposes of this chapter, this subsection and section 637(a) of this title, the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance provided pursuant to this paragraph or section 637(a) of this title prior to the graduation of the participating small business concern pursuant to subparagraph (H) or the expiration of the maximum program participation in terms prescribed by paragraph (15)."

Subsec. (j)(10)(I). Pub. L. 101-37, §10(b), designated as subpar. (I) the undesignated subpar. which followed subpar. (H).

Pub. L. 101-37, §10(a), made technical correction to directory language of Pub. L. 100-656, §303(a), see 1988 Amendment note below.

Subsec. (j)(10)(J)(i). Pub. L. 101-37, §6(a), substituted "suspended" for "suspended or terminated".

Subsec. (j)(11)(B). Pub. L. 101-37, §4(1), added subpar. (B) and struck out former subpar. (B) which read as follows: "Except as provided in section 602(d) of the Business Opportunity Development Reform Act of 1988, any individual upon whom eligibility is based pursuant to section 637(a)(4) of this title, shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 637(a) of this title to be socially and economically disadvantaged before June 1, 1989, shall be permitted to assert such disadvantage with respect to any other concern making application for certification after June 1, 1989."

Subsec. (j)(11)(E). Pub. L. 101-37, §4(2), (3), substituted "Office of Minority Small Business" for "Office of the Associate Administrator for Minority Small Business" and "the Associate Administrator for Minority

Small Business and Capital Ownership Development" for "such Associate Administrator".

Subsec. (j)(11)(F)(v). Pub. L. 101-37, §4(4), substituted "to the Associate Administrator" for "with the Associate Administrator".

Subsec. (j)(11)(F)(vi). Pub. L. 101-37, §4(5), added cl. (vi) and struck out former cl. (vi) which read as follows: "decide protests from applicants that have been denied program admission;".

Subsec. (j)(11)(F)(viii). Pub. L. 101-37, §4(6), substituted "subparagraph (I)" for "subparagraph (H)".

Subsec. (j)(11)(G)(ii). Pub. L. 101-37, §4(7), substituted "Participants" for "participants".

Subsec. (j)(11)(H), (I). Pub. L. 101-37, §4(9), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (j)(12)(A). Pub. L. 101-37, §8(a)(1), substituted "developmental" for "development".

Subsec. (j)(12)(B). Pub. L. 101-37, §8(a)(2), inserted "in its effort" after "to assist the concern".

Subsec. (j)(13)(E). Pub. L. 101-37, §8(b), inserted second sentence and struck out former second sentence which read as follows: "Such financial assistance may be made without regard to section 647(a) of this title, shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments."

1988—Subsec. (a)(2). Pub. L. 100-590, §103, inserted ", but any such reduction shall not exceed five points" after "any successor thereto" in second proviso.

Subsec. (a)(2)(B)(iii), (iv). Pub. L. 100-418, §8007(a)(1), added cls. (iii) and (iv).

Subsec. (a)(3). Pub. L. 100-418, §8007(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this chapter would exceed \$500,000: *Provided*, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed \$350,000."

Subsec. (a)(12). Pub. L. 100-590, §111(c), designated existing provisions as subpar. (A) and added subpar. (b)[(B)].

Subsec. (a)(14). Pub. L. 100-418, §8005, amended par. (14) generally. Prior to amendment, par. (14) read as follows: "The Administration under this subsection may provide extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing: *Provided, however*, That no such extension or revolving line of credit may be made for a period or periods exceeding eighteen months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable."

Subsec. (a)(16) to (18). Pub. L. 100-418, §8007(a)(3), (4), added pars. (16) and (17) and redesignated former par. (16) as (18).

Subsec. (a)(19). Pub. L. 100-533 and Pub. L. 100-590, §102(a), made identical amendments adding par. (19).

Subsec. (a)(20). Pub. L. 100-656, §302, added par. (20).

Subsec. (b)(1)(A). Pub. L. 100-590, §§119(a), 121, substituted "natural or other disasters" for "floods, riots or civil disorders, or other catastrophes" and inserted proviso that Administration may increase loan up to additional 20 per centum to protect damaged or destroyed property from possible future disasters.

Subsec. (b)(2)(A). Pub. L. 100-707, §109(f)(1), substituted "the Disaster Relief and Emergency Assistance Act" for "the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended (42 U.S.C. 1855-1855g)".

Subsec. (b)(E). Pub. L. 100-707, §109(f)(2), substituted "section 312(a) of the Disaster Relief and Emergency Assistance Act" for "subsection (b) of section 315 of Public Law 93-288 (42 U.S.C. 5155)".

Subsec. (c)(5)(C). Pub. L. 100-590, §120(b), substituted "business or other concern, including agricultural cooperatives," for "business concern".

Subsec. (c)(6). Pub. L. 100-590, §122, substituted "refinancing: *Provided further*, That the Administration shall not require collateral for loans of \$10,000 or less which are made under paragraph (1) of subsection (b)" for "refinancing".

Subsec. (c)(7). Pub. L. 100-590, §120(a), added par. (7).

Subsec. (f). Pub. L. 100-707, §109(f)(3), substituted "section 102(2) of the Disaster Relief and Emergency Assistance Act" for "section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a))".

Subsec. (j)(3)(A). Pub. L. 100-656, §505(h), struck out subpar. (A) which read as follows: "An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee."

Subsec. (j)(10)(A)(i). Pub. L. 100-656, §205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 637(a)(6) of this title, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 637(a)(9) of this title;"

Subsec. (j)(10)(C). Pub. L. 100-656, §205(b)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: "No small business concern shall receive a contract pursuant to section 637(a) of this title unless—

"(i) the business plan required pursuant to paragraph (10)(A)(i) is approved by the Administration; and

"(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business."

Subsec. (j)(10)(D). Pub. L. 100-656, §205(b)(2), (3), added subpar. (D). Former subpar. (D) redesignated (C).

Pub. L. 100-656, §203, added subpar. (D).

Subsec. (j)(10)(E) to (H). Pub. L. 100-656, §208, added subpars. (E) to (H).

Subsec. (j)(10)(I). Pub. L. 100-656, §303(a), as amended by Pub. L. 101-37, §10(a), added new subpar. without subpar. designation, but which probably was intended to be subpar. (I). See 1989 Amendment note above.

Subsec. (j)(10)(J). Pub. L. 100-656, §206, added subpar. (J).

Subsec. (j)(11). Pub. L. 100-656, §201(a), designated existing provisions as subpar. (A) and added subpars. (B) to (H).

Subsec. (j)(12). Pub. L. 100-656, §301(a), added par. (12).

Subsec. (j)(13). Pub. L. 100-656, §301(b), added par. (13).

Subsec. (j)(14). Pub. L. 100-656, §301(c), added par. (14).

Subsec. (j)(15). Pub. L. 100-656, §202, added par. (15).

Subsec. (j)(16). Pub. L. 100-656, §408, added par. (16).

1986—Subsec. (a)(2). Pub. L. 99-272, §18013, in subpar. (A) substituted "\$155,000" for "\$100,000", in subpar. (B)(i) substituted "\$155,000" for "\$100,000" and "85" for "90", in proviso following subpar. (B) substituted "85" for "90", and inserted a second proviso relating to reduction by the Administration of its participation below the per centum stated in this paragraph and defining "preferred lenders program".

Subsec. (a)(15)(B)(i). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(16). Pub. L. 99-272, §18007, added par. (16).

Subsec. (b). Pub. L. 99-272, §18006(a)(1), in provision preceding par. (1) substituted "Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the," for "The", struck out par. (3) which authorized loans, each one not to exceed \$500,000, to any small business concern to effect continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods or operation caused by direct action of the Federal Government or as a consequence of Federal Government action provided that the applicant was unable to obtain credit elsewhere, and struck out par. (4) which authorized disaster loans, each one not to exceed \$100,000, to any small business concern located in an area of economic dislocation that was the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern was unable to obtain credit elsewhere.

Subsec. (c)(4). Pub. L. 99-272, §18006(a)(2), struck out provision following subpar. (D) which provided that loans, subject to reductions under subpars. (A) and (B) of par. (1), be in amounts equal to 100 percent of loss if the applicant was a homeowner and 85 percent if the applicant was a business or otherwise, the interest rate for loans under pars. (1) and (2) be the rate of interest in effect on the date the disaster commenced, and the Administrator, in his discretion, waive the \$500,000 limitation on the total amount outstanding and committed to the borrower under this subsection if the applicant constituted a major source of employment in an area suffering a disaster.

1984—Subsec. (b)(2). Pub. L. 98-270, §311(1), (3), substituted in provisions preceding subpar. (A) "small business concern or small agricultural cooperative" for "small business concern" and "the concern or the cooperative" for "the concern".

Subsec. (b)(2)(D). Pub. L. 98-270, §311(2), substituted "small business concerns or small agricultural

cooperatives" for "small business concerns".

Subsec. (b)(3). Pub. L. 98-270, §308, inserted "continuation of," after "in effecting" and inserted provision directing that, for purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, be deemed to be a consequence of Federal Government action.

Subsec. (b)(4). Pub. L. 98-270, §304(2), added par. (4).

Subsec. (c). Pub. L. 98-270, §301, added undesignated par. following par. (6).

Subsec. (c)(5). Pub. L. 98-270, §301, added par. (5).

Subsec. (c)(6). Pub. L. 98-270, §301, added par. (6).

Pub. L. 98-270, §309, inserted provision directing that employees of concerns sharing common business premises be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

Subsec. (d)(1). Pub. L. 98-395 substituted provisions stating that the Administration shall not fund any Small Business Development Center except as authorized for former provisions which prohibited such funding only after October 1, 1980.

1981—Subsec. (a). Pub. L. 97-35, §1902, substituted provisions empowering the Administration to the extent and in such amounts as provided in advance in appropriation acts, for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to qualified small business concerns including those owned by qualified Indian tribes, for purposes of this chapter, and that financing may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred basis for provisions empowering the Administration to make loans to enable small business concerns and such concerns wholly owned by Indian tribes to finance plant construction, conversion, or expansion, including the acquisition of land, or to finance residential or commercial construction or rehabilitation, for sale, with a proviso that such loans shall not be used primarily for the acquisition of land, or to finance the acquisition of equipment, facilities, machinery, supplies, or materials, or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy, and that such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis.

Subsec. (a)(6)(C). Pub. L. 97-35, §1910, repealed subpar. (C) which read as follows: "the Administration shall not decline to participate in a loan on a deferred basis under this subsection solely because such loan will be used to refinance all or any part of the existing indebtedness of a small business concern, unless the Administration determines that—

"(i) the holder of such existing indebtedness is in a position likely to sustain a loss if such refinancing is not provided, and

"(ii) if the Administration provides such refinancing through an agreement to participate on a deferred basis, it will be in a position likely to sustain part or all of any loss which would have otherwise been sustained by the holder of the original indebtedness: *Provided further*, That the Administration may decline to approve such refinancing if it determines that the loan will not benefit the small business concern."

Subsec. (a)(8). Pub. L. 97-35, §1910, repealed par. (8) which read as follows: "(8)(A) Any loan made under the authority of this subsection by the Administration in cooperation with a bank or other lending institution through an agreement to participate on a deferred basis, may, upon the concurrence of the Administration, borrower and such bank or institution, have the term of such loan extended or such loan refinanced with an extension of its term: *Provided*, That the aggregate term of such extended or refinanced loan does not exceed the term permitted pursuant to paragraph (5): *And provided further*, That such extended loans, or refinancings shall be repaid in equal installments of principal and interest.

"(B) An additional service fee not exceeding 1 per centum of the outstanding amount of the principal may be paid by the borrower to the lender in consideration for such lender extending the term or refinancing of such borrower's indebtedness if such extension or refinancing results in the term of such indebtedness exceeding ten years.

"(C) The authority provided in this paragraph shall not be construed to otherwise limit the authority of the Administration to set terms and conditions of the loan."

Subsec. (b)(1). Pub. L. 97-35, §1911, revised provisions to specifically authorize loans only to repair, rehabilitate, or replace property, real or personal, damaged or destroyed, and is not compensated for by insurance or otherwise, and to refinance any mortgage or other lien against a totally destroyed or substantially

damaged home or business concern upon finding that the applicant is not able to obtain credit elsewhere, that such property is to be repaired, rehabilitated, or replaced, that the amount refinanced shall not exceed the loss, and that the amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise.

Subsec. (b)(2). Pub. L. 97-35, §1911, revised provisions to continue to authorize loans to business concerns which the Administration determines to have suffered substantial economic injury as a result of a physical disaster as declared under certain pertinent triggering legislation.

Subsec. (b)(3) to (9). Pub. L. 97-35, §1913(a), designated existing provisions of par. (5) as (3) with minor changes, and struck out pars. (3), (4), and (6) to (9) relating to non-physical disaster loans.

Subsec. (c)(3). Pub. L. 97-35, §1914, substituted "effective date of this Act" for "to October 1, 1983".

Subsec. (c)(4). Pub. L. 97-35, §1912, added par. (4).

Subsec. (g). Pub. L. 97-35, §1913(c), repealed subsec. (g) which related to loans to small business concerns for water pollution control facilities.

1980—Subsec. (a). Pub. L. 96-481, §112, inserted provisions preceding par. (1) empowering the Administration to the extent and in such amounts as are provided in appropriation acts to make or effect either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing, with proviso limiting the extension of credit or revolving line of credit to a period of eighteen months.

Subsec. (a)(8). Pub. L. 96-302, §505, added par. (8).

Subsec. (b). Pub. L. 96-302, §124, which directed that cl. (E), respecting duplication of disaster benefits, be added at end of subsec. (b), was executed by inserting cl. (E) following cl. (D) in next to last par. of subsec. (b) as the probable intent of Congress.

Subsec. (b)(4). Pub. L. 96-302, §123, substituted "other causes" for "undetermined causes" and made the small business concern ineligible for loan assistance when the concern intentionally adulterates its product in attempting to establish eligibility under the loan assistance program.

Subsec. (b)(8). Pub. L. 96-302, §122, authorized loans to assist small business concern affected by a shortage of coal or other energy-producing resource caused by a strike, boycott, or embargo, unless the strike, boycott, or embargo is directly against the small business concern.

Subsec. (c)(3). Pub. L. 96-302, §119(a), (b), added subpar. (C) and extended disaster loans to disasters occurring prior to Oct. 1, 1983, instead of Oct. 1, 1982.

Subsec. (d)(1). Pub. L. 96-302, §203, substituted provisions respecting: funding of small business development centers under section 648 of this title on and after Oct. 1, 1980; operation of such centers funded prior to Oct. 1, 1979; and prescribing \$300,000 limitation for fiscal year 1980, for such centers funded in fiscal year 1979, for provisions respecting grants for studies research, and counseling concerning the managing, financing, and operation of small-business enterprises; study and research recommendation; and conditions, now covered in section 648(a) of this title.

Subsec. (j)(10). Pub. L. 96-481, §104, in opening paragraph substituted provision that the program and all other services and activities authorized under this subsection and section 637(a) of this title shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the Supervision of, and responsible to the Administrator, for provision that the management of the program shall be vested in the Associate Administrator for Minority Small Business and Capital Ownership Development who shall also manage all other services and activities authorized under this subsection and section 637(a) of this title.

Subsec. (j)(10)(A)(i). Pub. L. 96-481, §106(a), substituted "targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 637(a)(6) of this title, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate; *Provided further*, That no determination made under this paragraph shall be considered a denial of participation for the purposes of section 637(a)(9) of this title" for "targets, objectives and goals".

Subsec. (j)(10)(C). Pub. L. 96-481, §107, in the conditions required to receive a contract by a small business concern, substituted provisions that the business plan be approved by the Administration and that the program be able to provide the concern with management, technical and financial services necessary to achieve the targets, objectives and goals of such business, for provision that the program be able to provide the concern with management, technical and financial services as may be necessary to promote the competitive viability of the concern within a reasonable period of time.

1979—Subsec. (b) following par. (9). Pub. L. 96-38 inserted ", except as provided in subsection (c) of this

section," after "the interest rate on the Administration's share of any loan made under this subsection" in first unnumbered paragraph.

Subsec. (c)(3). Pub. L. 96-38 added par. (3).

1978—Subsec. (a). Pub. L. 95-507, §231, inserted provision including small-business concerns totally owned and controlled by Indian tribes within the scope of this section.

Subsec. (d). Pub. L. 95-315, §3, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95-507, §204, included individuals and enterprises eligible for assistance under par. (10) of this subsection and section 637(a) of this title among those eligible for assistance under this section, provided for the establishment of the small business and capital ownership development program, and provided for the coordination of certain Federal policies under this section by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (k). Pub. L. 95-507, §205, inserted reference to section 637(a).

Subsec. (k)(4). Pub. L. 95-510 substituted "the daily equivalent of the highest rate payable under section 5332 of title 5" for "\$100 per diem".

Subsec. (l). Pub. L. 95-315, §2, added subsec. (l).

1977—Subsec. (a). Pub. L. 95-89, §301, authorized loans to finance residential or commercial construction or rehabilitation for sale, subject to restriction that such loans be not used primarily for the acquisition of land.

Subsec. (a)(8). Pub. L. 95-89, §101(d), repealed par. (8) which required the Administrator to make direct loans under subsec. (a) in an aggregate amount of not less than \$400,000,000 during fiscal year ending June 30, 1975.

Subsec. (b). Pub. L. 95-89, §405, inserted following par. (9) provisions respecting interest rate on loans to repair or replace primary residence and/or replace or repair damaged or destroyed personal property, including installation of insulation in connection with any disaster occurring on or after April 1, 1977, and transmission of a report to congressional committees respecting the activities under the provisions and the encouragement of such insulation installations.

Subsec. (b)(2)(C) to (E). Pub. L. 95-89, §403, added subpars. (C) to (E).

Subsec. (b)(3). Pub. L. 95-89, §402, substituted "program or project constructed by or with funds provided in whole or in part by the Federal Government or by a program or project by a State or local government or public service entity, providing such government or public service entity has the authority to exercise the right of eminent domain on such program or project" for "federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government".

Subsec. (b)(5). Pub. L. 95-89, §302, inserted "heretofore or hereafter enacted" after "any Federal law".

Subsec. (b)(9). Pub. L. 95-89, §404, added par. (9).

Subsec. (g)(4). Pub. L. 95-89, §101(e), repealed par. (4) which authorized appropriation of not to exceed \$800,000,000 to the disaster fund solely for purpose of carrying out subsec. (g) loans to small business concerns for water pollution control facilities.

1976—Subsec. (a)(1). Pub. L. 94-305, §112(c), inserted reference to non-Federal sources.

Subsec. (a)(4)(A). Pub. L. 94-305, §111, substituted "\$500,000: *Provided*, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed \$350,000" for "\$350,000".

Subsec. (a)(4)(C). Pub. L. 94-305, §108(b), substituted provision relating to a twenty year maturity period for any portion of loan made for the purpose of acquiring real property or constructing facilities for provision relating to a ten year maturity for portion of loan made for purpose of constructing facilities.

Subsec. (b). Pub. L. 94-305, §114, in provisions following par. (8), substituted provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt for provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed 3 per centum per annum except for loans made under pars. (3), (5), (6), (7), or (8) in which the interest will not exceed either 2¾ per centum per annum or the average annual interest rate of all interest-bearing obligations of the United States then forming a part of the public debt.

Subsec. (b)(4). Pub. L. 94-305, §112(d), struck out proviso that loans under subsec. (b)(4) of this section include loans to persons who are engaged in business of raising livestock, and who suffer substantial injury as a result of animal disease.

Subsec. (i)(1), (3). Pub. L. 94-305, §109, substituted "\$100,000" for "\$50,000".

1974—Subsec. (a)(4)(B). Pub. L. 93-386, §8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not more than 5½ per centum per annum.

Subsec. (a)(5)(B). Pub. L. 93-386, §8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not less than 3 nor more than 5 per centum per annum.

Subsec. (a)(8). Pub. L. 93-386, §12, added par. (8).

Subsec. (b)(4). Pub. L. 93-237, §5, inserted proviso that loans under this paragraph include loans to persons who are engaged in the business of raising livestock and who suffer substantial economic injury as a result of animal disease.

Subsec. (b)(5) to (7). Pub. L. 93-237, §§2(a), (b), 6, consolidated into a single par. (5) the authority of the Small Business Administration contained in former par. (5) to make loans to small business concerns to meet the requirements of the Federal Coal Mine Health and Safety Act of 1969, the Egg Products Inspection Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act, and former par. (6) to make loans to small business concerns to meet the requirements of the Occupational Safety and Health Act of 1970, expanded such authority to finance structural, operational, or other changes required in order to meet standards imposed by Federal laws, or by State laws enacted in conformity with Federal laws, redesignated former par. (7) as par. (6), and added par. (7).

Subsec. (b)(8). Pub. L. 93-386, §9(a), added par. (8).

Subsec. (b). Pub. L. 93-386, §9(b), substituted "paragraph (3), (5), (6), (7), or (8)" for "paragraph (3), (5), (6), or (7)" in first par. following the numbered pars.

Subsecs. (g), (h). Pub. L. 93-237, §3(a), redesignated subsec. (g), relating to loans to handicapped persons and organizations for handicapped, as (h).

Subsec. (h)(2). Pub. L. 93-386, §3(2), inserted "The Administration's share of" before "any loan".

Subsecs. (i) to (k). Pub. L. 93-386, §2(a)(4), added subsecs. (i) to (k).

1972—Subsec. (b). Pub. L. 92-385 added par. (7), and in text following the numbered paragraphs, inserted provisions relating to the administration of the disaster loan program in relation to disasters occurring between January 1, 1971, and July 1, 1973.

Subsec. (g). Pub. L. 92-595 added subsec. (g) relating to loans to handicapped persons and organizations for handicapped.

Pub. L. 92-500 added subsec. (g) relating to loans to small business concerns for water pollution control facilities.

1970—Subsec. (b). Pub. L. 91-597 added par. (5) relating to loans for additions or alterations required under the Egg Products Inspection Act, etc., and inserted reference to such par. (5).

Pub. L. 91-596 added par. (6) and inserted reference to par. (6) after reference to par. (5).

1969—Subsec. (b). Pub. L. 91-173 added par. (5), and inserted reference to par. (5) after reference to par. (3).

1968—Subsec. (b)(1). Pub. L. 90-448 empowered the Administration to make loans because of riots or civil disorders.

Subsec. (b)(3). Pub. L. 90-495 added continuing in business at its existing location, purchasing a business, and establishing a new business to the list of purposes for which loans may be made, and extended the causes of substantial economic injury of the concern involved to include its location in, adjacent to, or near a federally aided urban renewal program, highway project, or other construction project using federal funds.

1967—Subsec. (a)(4). Pub. L. 90-104, §103, extended maturity date for construction loans from ten to fifteen years.

Subsec. (f). Pub. L. 90-104, §104, redesignated subsec. (e), added by Pub. L. 89-769, as (f).

1966—Subsec. (e). Pub. L. 89-409 added subsec. (e).

Pub. L. 89-769 added subsec. (e) which provided for assistance to privately owned higher education in major disaster areas and repayment.

1965—Subsec. (b). Pub. L. 89-59, §1(a), increased the maturity of disaster loans from twenty to thirty years, and authorized suspension of principal and interest payments and extension of date of maturity for five year period.

Subsec. (c). Pub. L. 89-59, §1(b), designated existing provisions as par. (1) and added par. (2).

1964—Subsecs. (b)(2), (4). Pub. L. 88-264 extended provisions of par. (2) to any small business affected by disasters other than drought or excessive rainfall and added par. (4) for disaster loans to any such business suffering economic injuries through natural or undetermined causes.

Subsec. (b)(3). Pub. L. 88-560 provided that the purposes of a loan under this paragraph may include the purchase or construction of other premises whether or not the borrower owned the premises from which it was displaced.

1961—Subsec. (b). Pub. L. 87-70 added par. (3), and inserted provisions limiting the interest rate in the case of loans made pursuant to par. (3) to not more than the higher of (A) $2\frac{3}{4}$ per centum per annum, or (B)

the average annual interest rate on all interest-bearing obligations forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum.

Subsec. (d). Pub. L. 87–305 empowered the Administration to make grants to any corporation formed by two or more eligible entities described in the text, authorized it to recommend to grant applicants particular studies or research, eliminated the limitation of one grant to a State, and conditioned grants to the procurement of additional amounts from sources other than the Administration.

1959—Subsec. (d). Pub. L. 86–367 struck out provision for making the grants from the fund established in the Treasury by section 602(b) of the Small Business Investment Act of 1958.

1958—Subsec. (d). Pub. L. 85–699 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–2, title V, §5001(c)(3), Mar. 11, 2021, 135 Stat. 84, provided that: "The amendments made by this subsection [amending this section and section 636m of this title] shall apply only with respect to applications for forgiveness of covered loans made under paragraphs (36) or (37) of section 7(a) of the Small Business Act [15 U.S.C. 636(a)(36), (37)], as amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), that are received on or after the date of the enactment of this Act [Mar. 11, 2021]."

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title III, §304(c), Dec. 27, 2020, 134 Stat. 1996, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [transferring section 9005 of this title to section 636m of this title and amending this section and sections 636m and 9008 of this title] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan.

"(2) EXCLUSION OF LOANS ALREADY FORGIVEN.—The amendments made by subsections (a) and (b) shall not apply to a loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) for which the borrower received forgiveness before the date of enactment of this Act under section 1106 of the CARES Act [15 U.S.C. 9005], as in effect on the day before such date of enactment."

Pub. L. 116–260, div. N, title III, §308(b), Dec. 27, 2020, 134 Stat. 2000, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §310(a)(2), Dec. 27, 2020, 134 Stat. 2000, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §313(b), Dec. 27, 2020, 134 Stat. 2009, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan.

"(2) EXCLUSION OF LOANS ALREADY FORGIVEN.—The amendments made by subsection (a) shall not apply to a loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) for which the borrower received forgiveness before the date of enactment of this Act under section 1106 of the

CARES Act [15 U.S.C. 9005], as in effect on the day before such date of enactment."

Pub. L. 116–260, div. N, title III, §315(c), Dec. 27, 2020, 134 Stat. 2011, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 636m of this title] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §326(a)(2), Dec. 27, 2020, 134 Stat. 2036, provided in part that the amendment made by section 326(a)(2) of Pub. L. 116–260 is effective Oct. 1, 2021.

Pub. L. 116–260, div. N, title III, §326(b)(2)(B), Dec. 27, 2020, 134 Stat. 2037, provided in part that the amendment made by section 326(b)(2)(B) of Pub. L. 116–260 is effective Oct. 1, 2021.

Pub. L. 116–260, div. N, title III, §329(a)(2), Dec. 27, 2020, 134 Stat. 2042, provided in part that the amendment made by section 329(a)(2) of Pub. L. 116–260 is effective Oct. 1, 2021.

Pub. L. 116–260, div. N, title III, §335(b), Dec. 27, 2020, 134 Stat. 2047, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §336(b), Dec. 27, 2020, 134 Stat. 2048, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan.

"(2) EXCLUSION OF LOANS ALREADY FORGIVEN.—The amendment made by subsection (a) shall not apply to a loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) for which the borrower received forgiveness before the date of enactment of this Act under section 1106 of the CARES Act [15 U.S.C. 9005], as in effect on the day before such date of enactment."

Pub. L. 116–260, div. N, title III, §337(b), Dec. 27, 2020, 134 Stat. 2048, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §338(b), Dec. 27, 2020, 134 Stat. 2048, provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §339(a), (c), Dec. 27, 2020, 134 Stat. 2049, provided that:

"(a) DEFINITIONS.—In this section [amending this section and enacting this note], the terms 'covered loan' and 'eligible recipient' have the meanings given the terms in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)).

"(c) APPLICABILITY.—The amendment made by subsection (b) [amending this section] may apply with respect to a covered loan made before the date of enactment of this Act [Dec. 27, 2020], upon the agreement of the lender and the eligible recipient with respect to the covered loan."

Pub. L. 116–260, div. N, title III, §340(b)(2), Dec. 27, 2020, 134 Stat. 2050, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §343(b), Dec. 27, 2020, 134 Stat. 2051, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §348, Dec. 27, 2020, 134 Stat. 2052, provided that: "Except as otherwise provided in this Act [probably means "this title", title III of div. N of Pub. L. 116–260, see Tables for classification], this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Dec. 27, 2020] and apply to loans and grants made on or after the date of enactment of this Act."

Pub. L. 116–142, §2(b), June 5, 2020, 134 Stat. 641, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [June 5, 2020] and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) on or after such date. Nothing in this Act [see Short Title of 2020 Amendment note set out under section 631 of this title], the CARES Act (Public Law 116–136) [see Short Title note set out under section 9001 of this title], or the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116–139) [see Short Title of 2020 Amendment note set out under section 9001 of this title] shall be construed to prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan described in subparagraph (K) of such section [15 U.S.C. 636(a)(36)(K)] to conform with requirements of this section."

Pub. L. 116–142, §3(d), June 5, 2020, 134 Stat. 643, provided that: "The amendments made by this section [amending this section and section 9005 of this title] shall be effective as if included in the CARES Act (Public Law 116–136) [see Short Title note set out under section 9001 of this title] and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) or section 1109 of the CARES Act [15 U.S.C. 9008]."

Pub. L. 116–136, div. A, title I, §1102(c)(2), Mar. 27, 2020, 134 Stat. 294, as amended by Pub. L. 116–260, div. N, title III, §326(b)(1), Dec. 27, 2020, 134 Stat. 2036, provided in part that the amendment made by section 1102(c)(2) of Pub. L. 116–136 is effective on Oct. 1, 2021.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, §877(b), Dec. 20, 2019, 133 Stat. 1529, provided that: "The amendments made by subsection (a)(1) [amending this section] shall apply to an economic injury suffered or likely to be suffered as the result of an essential employee being ordered to perform active service (as defined in section 101(d)(3) of title 10, United States Code) for a period of more than 30 consecutive days who is discharged or released from such active service on or after the date of enactment of this Act [Dec. 20, 2019]."

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–88, div. B, title I, §2102(b), Nov. 25, 2015, 129 Stat. 690, as amended by Pub. L. 115–280, §1, Nov. 29, 2018, 132 Stat. 4190; Pub. L. 116–70, §2, Nov. 22, 2019, 133 Stat. 1145, provided that the amendment made by section 2102(b) is effective on the date that is 7 years after Nov. 25, 2015.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title I, §1111(b), Sept. 27, 2010, 124 Stat. 2508, provided that the amendment made by section 1111(b) is effective Jan. 1, 2011.

Pub. L. 111–240, title I, §1133(b), Sept. 27, 2010, 124 Stat. 2515, provided that the amendment made by section 1133(b) is effective Sept. 30, 2013.

Pub. L. 111–240, title I, §1135(b), Sept. 27, 2010, 124 Stat. 2520, provided that the amendment made by section 1135(b) is effective 1 year after Sept. 27, 2010.

Pub. L. 111–240, title I, §1206(h), Sept. 27, 2010, 124 Stat. 2532, provided that: "The amendments made by subsections (a) through (f) [amending this section] shall apply with respect to any loan made after the date of enactment of this Act [Sept. 27, 2010]."

Pub. L. 111–240, title I, §1401(c), Sept. 27, 2010, 124 Stat. 2549, provided that the amendment made by section 1401(c)(1) is effective Oct. 1, 2012.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XII, §12078(b)(2), May 22, 2008, 122 Stat. 1415, and Pub. L. 110–246, §4(a), title XII, §12078(b)(2), June 18, 2008, 122 Stat. 1664, 2177, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to a loan or guarantee made after the date of enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XII, §12083(b), May 22, 2008, 122 Stat. 1420, and Pub. L. 110–246, §4(a), title XII,

§12083(b), June 18, 2008, 122 Stat. 1664, 2182, provided that: "The amendments made by this section [amending this section] shall apply to any major disaster declared on or after the date of enactment of this Act [June 18, 2008]."

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-447, div. K, title I, §101(b), Dec. 8, 2004, 118 Stat. 3443, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004]."

Pub. L. 108-447, div. K, title I, §103(b), Dec. 8, 2004, 118 Stat. 3444, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004]."

Pub. L. 108-447, div. K, title I, §107(c), Dec. 8, 2004, 118 Stat. 3446, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-100 effective Oct. 1, 2002, see section 6(e) of Pub. L. 107-100, set out in an Effective Date of 2001 Amendment; Use of Funds note under section 697 of this title.

EFFECTIVE AND TERMINATION DATES OF 1999 AMENDMENTS

Pub. L. 106-50, title IV, §402(e), Aug. 17, 1999, 113 Stat. 246, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this section [Aug. 17, 1999].

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

Pub. L. 106-8, §3(c), Apr. 2, 1999, 113 Stat. 16, provided that effective Dec. 31, 2000, this section (amending this section and enacting provisions set out as a note under this section) and the amendments made by this section are repealed.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(10)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(9)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Oct. 1, 1996, see section 3 of Pub. L. 104-208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104-36, set out as a note under section 634 of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Pub. L. 103-403, title II, §208(c), Oct. 22, 1994, 108 Stat. 4182, provided that: "The amendments made by this section [amending this section] shall remain in effect during the period beginning on the date of enactment of this Act [Oct. 22, 1994] and ending on October 1, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-81, §5(b), Aug. 13, 1993, 107 Stat. 782, provided that: "Notwithstanding any other provision of law, the amendments made by subsection (a) [amending this section] shall be effective September 1, 1993, but shall not be applicable to loan guarantee applications received by the Administration prior to August 21, 1993. In order to determine the percent of the loan to be guaranteed pursuant to the amendments made by subsection (a), the Administration shall aggregate the outstanding guaranteed principal of multiple loan guarantees issued on behalf of the same borrower."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-366, title I, §113(b), Sept. 4, 1992, 106 Stat. 993, provided that: "The amendments made by paragraphs (4) and (5) of subsection (a) [amending this section] shall become effective on October 1, 1992."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-37 applicable as if included in Pub. L. 100-656, see section 32 of Pub. L. 101-37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendments by sections 202, 203, 206, 301(a), 408, and 505(h) of Pub. L. 100-656 and subsec. (j)(13)(G) and (I) of this section as added by section 301(b) of Pub. L. 100-656, effective Nov. 15, 1988, see section 803(a) of Pub. L. 100-656, set out as a note under section 631 of this title.

Amendments by sections 201(a), 205, 208, 301(b), (c), and 303(a) of Pub. L. 100-656 effective Aug. 15, 1989, see section 803(b)(1)(A), (B) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

Amendment by section 302 of Pub. L. 100-656 effective June 1, 1989, see section 803(b)(2) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

Subsection (j)(13)(E) of this section as added by section 301(b) of Pub. L. 100-656 effective Oct. 1, 1989, see section 803(b)(4)(D) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

Amendments by sections 119(a) and 120 to 122 of Pub. L. 100-590 effective for all loan applications resulting from disaster declarations made on or after Aug. 1, 1988, or from disaster declarations whose filing periods were open on Oct. 1, 1988, see section 137 of Pub. L. 100-590, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as a note under section 632 of this title.

Pub. L. 98-270, title III, §307, Apr. 18, 1984, 98 Stat. 161, provided that: "The amendments made by sections 304 and 305 of this title [amending this section and provisions set out as a note under section 631 of this title] shall apply to economic dislocations certified by any State Governor to the Small Business Administration after the date of enactment of this Act [Apr. 18, 1984] providing such dislocation commenced since January 1, 1982."

Amendment by section 311 of Pub. L. 98-270 applicable to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under subsec. (b)(2)(A), (B), or (C) of this section or with respect to which a certification has been made after such date under subsec. (b)(2)(D) of this section, see section 312 of Pub. L. 98-270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XIX, §1910, Aug. 13, 1981, 95 Stat. 778, provided that the repeal of subsec. (a)(6)(C), (8) of this section is effective Oct. 1, 1985.

Amendment by section 1913 of Pub. L. 97-35 effective Oct. 1, 1981, amendments by sections 1902, 1911, 1912, and 1914 of Pub. L. 97-35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97-35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

Pub. L. 96-302, title I, §119(d), July 2, 1980, 94 Stat. 841, provided that: "The amendments made by this section to sections 7(c)(3)(C) [subsection (c)(3) of this section] and 18 [section 647 of this title] of the Small Business Act shall not apply to any disaster which commenced on or before the effective date of this Act."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 101(d), (e) of Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–385, §1(b), Aug. 16, 1972, 86 Stat. 555, provided that: "The last paragraph of the amendment made by subsection (a) [amending this section] shall apply only with respect to loans made on or after the date of enactment of this Act [Aug. 16, 1972]."

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91–597 see section 29 of Pub. L. 91–597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91–596, set out as a note under section 651 of Title 29, Labor.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–409, §3(c), May 2, 1966, 80 Stat. 133, provided that: "This section [amending this section, repealing section 637a of this title, and enacting provisions set out as a note under section 633 of this title] shall take effect on July 1, 1966."

REGULATIONS

Pub. L. 117–249, §2(b), Dec. 20, 2022, 136 Stat. 2351, provided that: "Not later than 120 days after the date of enactment of this Act [Dec. 20, 2022], the Administrator of the Small Business Administration shall issue regulations to carry out the amendment made by subsection (a) [amending this section]."

Pub. L. 116–136, div. A, title I, §1102(e), Mar. 27, 2020, 134 Stat. 294, provided that: "On and after the date of enactment of this Act [Mar. 27, 2020], the interim final rule published by the Administrator entitled 'Express Loan Programs: Affiliation Standards' (85 Fed. Reg. 7622 (February 10, 2020)) is permanently rescinded and shall have no force or effect."

Pub. L. 111–240, title I, §1131(b), Sept. 27, 2010, 124 Stat. 2514, provided that: "Not later than 180 days after the date of enactment of this Act [Sept. 27, 2010], the Administrator [of the Small Business Administration] shall issue regulations to carry out section 7(l) of the Small Business Act [15 U.S.C. 636(l)], as amended by subsection (a)."

Pub. L. 106–50, title IV, §402(d), Aug. 17, 1999, 113 Stat. 246, provided that: "Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as notes under this section] and the amendments made by this section."

Pub. L. 106–8, §3(b), Apr. 2, 1999, 113 Stat. 15, which provided that not later than 30 days after Apr. 2, 1999, Administrator of the Small Business Administration was to issue guidelines to carry out the program under former subsec. (a)(27) of this section, was repealed by Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16, effective Dec. 31, 2000.

Section 114 of Pub. L. 102–366 provided that: "Not later than 45 days after the date of enactment of this Act [Sept. 4, 1992], the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this subtitle [subtitle B (§§111–115) of title I of Pub. L. 102–366, amending this section, enacting provisions set out as notes below, and amending provisions set out as a note under section 631 of this title]."

Pub. L. 102–140, title VI, §609(i), Oct. 28, 1991, 105 Stat. 831, provided that: "Not later than 90 days after the date of the enactment of this Act [Oct. 28, 1991], the Small Business Administration shall promulgate interim final regulations to implement the microloan demonstration program."

Pub. L. 100–656, title VIII, §801, Nov. 15, 1988, 102 Stat. 3898, as amended by Pub. L. 101–37, §30, June 15, 1989, 103 Stat. 76, provided that: "The Small Business Administration shall—"

"(1) within 60 days after the date of enactment of this Act [Nov. 15, 1988] conduct meetings of present and potential participants in the program established by section 7(j)(10) of the Small Business Act [15 U.S.C. 636(j)(10)], as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act [see Short Title of 1988 Amendment note set out under section 631 of this title];

"(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

"(3) within 270 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsections (a)(15)(E) and (j)(16)(B) of this section are listed on page 191), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RESTRICTION

Pub. L. 117–6, §2(c), Mar. 30, 2021, 135 Stat. 250, provided that: "From June 1, 2021, through June 30, 2021, the Administrator of the Small Business Administration shall not accept new lender applications for loans under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and shall only process such lender applications that have been submitted to the Administrator before June 1, 2021."

SUBSEQUENT PAYCHECK PROTECTION PROGRAM LOANS

Pub. L. 116–260, div. N, title II, §276(b), Dec. 27, 2020, 134 Stat. 1979, provided that: "For purposes of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], in the case of any taxable year ending after the date of the enactment of this Act [Dec. 27, 2020]—

"(1) no amount shall be included in the gross income of an eligible entity (within the meaning of subparagraph (J) of section 7(a)(37) of the Small Business Act [15 U.S.C. 636(a)(37)]) by reason of forgiveness of indebtedness described in clause (ii) of such subparagraph,

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of an eligible entity that is a partnership or S corporation—

"(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986 [26 U.S.C. 705, 1366], and

"(B) except as provided by the Secretary of the Treasury (or the Secretary's delegate), any increase in the adjusted basis of a partner's interest in a partnership under section 705 of the Internal Revenue Code of 1986 with respect to any amount described in subparagraph (A) shall equal the partner's distributive share of deductions resulting from costs giving rise to the forgiveness of indebtedness referred to in paragraph (1)."

DEMOGRAPHIC INFORMATION ON LOAN APPLICATIONS

Pub. L. 116–260, div. N, title III, §309, Dec. 27, 2020, 134 Stat. 2000, provided that: "On and after the date of enactment of this Act [Dec. 27, 2020], any loan origination application for a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended and added by this division, shall include a means by which the applicant for the loan may, at the discretion of the applicant, submit demographic information of the owner of the recipient of the loan, including the sex, race, ethnicity, and veteran status of the owner."

ELIGIBLE CHURCHES AND RELIGIOUS ORGANIZATIONS

Pub. L. 116–260, div. N, title III, §311(c), Dec. 27, 2020, 134 Stat. 2007, provided that:

"(1) SENSE OF CONGRESS.—It is the sense of Congress that the interim final rule of the [Small Business] Administration entitled 'Business Loan Program Temporary Changes; Paycheck Protection Program' (85 Fed. Reg. 20817 (April 15, 2020)) properly clarified the eligibility of churches and religious organizations for loans made under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

"(2) APPLICABILITY OF PROHIBITION.—The prohibition on eligibility established by section 120.110(k) of title 13, Code of Federal Regulations, or any successor regulation, shall not apply to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a))."

INCREASED ABILITY FOR PAYCHECK PROTECTION PROGRAM BORROWERS TO REQUEST AN INCREASE IN LOAN AMOUNT DUE TO UPDATED REGULATIONS

Pub. L. 116–260, div. N, title III, §312, Dec. 27, 2020, 134 Stat. 2007, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the terms 'covered loan' and 'eligible recipient' have the meanings given those terms in 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)); and

"(2) the term 'included covered loan' means a covered loan for which, as of the date of enactment of this Act [Dec. 27, 2020], the borrower had not received forgiveness under section 1106 of the CARES Act [15 U.S.C. 9005], as in effect on the day before such date of enactment.

"(b) RULES OR GUIDANCE.—Not later than 17 days after the date of enactment of this Act, and without regard to the notice requirements under section 553(b) of title 5, United States Code, the Administrator [of the Small Business Administration] shall issue rules or guidance to ensure that an eligible recipient of an included covered loan that returns amounts disbursed under the included covered loan or does not accept the full amount of the included covered loan for which the eligible recipient was approved—

"(1) in the case of an eligible recipient that returned all or part of an included covered loan, the eligible recipient may reapply for a covered loan for an amount equal to the difference between the amount retained and the maximum amount applicable; and

"(2) in the case of an eligible recipient that did not accept the full amount of an included covered loan, the eligible recipient may request a modification to increase the amount of the covered loan to the maximum amount applicable, subject to the requirements of section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

"(c) INTERIM FINAL RULES.—Notwithstanding the interim final rule issued by the Administration entitled 'Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Increases' (85 Fed. Reg. 29842 (May 19, 2020)), an eligible recipient of an included covered loan that is eligible for an increased covered loan amount as a result of any interim final rule that allows for covered loan increases may submit a request for an increase in the included covered loan amount even if—

"(1) the initial covered loan amount has been fully disbursed; or

"(2) the lender of the initial covered loan has submitted to the [Small Business] Administration a Form 1502 report related to the covered loan."

FARM CREDIT SYSTEM INSTITUTIONS

Pub. L. 116–260, div. N, title III, §314, Dec. 27, 2020, 134 Stat. 2009, provided that:

"(a) DEFINITION OF FARM CREDIT SYSTEM INSTITUTION.—In this section, the term 'Farm Credit System institution'—

"(1) means an institution of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

"(2) does not include the Federal Agricultural Mortgage Corporation.

"(b) FACILITATION OF PARTICIPATION IN PPP AND SECOND DRAW LOANS.—

"(1) APPLICABLE RULES.—Solely with respect to loans under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), Farm Credit Administration regulations and guidance issued as of July 14, 2020, and compliance with such regulations and guidance, shall be deemed functionally equivalent to requirements referenced in section 3(a)(iii)(II) of the interim final rule of the [Small Business] Administration entitled 'Business Loan Program Temporary Changes; Paycheck Protection Program' (85 Fed. Reg. 20811 (April 15, 2020)) or any similar requirement referenced in that interim final rule in implementing such paragraph (37).

"(2) APPLICABILITY OF CERTAIN LOAN REQUIREMENTS.—For purposes of making loans under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or forgiving those

loans in accordance with section 7A of the Small Business Act [15 U.S.C. 636m], as redesignated and transferred by section 304 of this Act, and subparagraph (J) of such paragraph (37), sections 4.13, 4.14, and 4.14A of the Farm Credit Act of 1971 (12 U.S.C. 2199, 2202, 2202a) (including regulations issued under those sections) shall not apply.

"(3) RISK WEIGHT.—

"(A) IN GENERAL.—With respect to the application of Farm Credit Administration capital requirements, a loan described in subparagraph (B)—

"(i) shall receive a risk weight of zero percent; and

"(ii) shall not be included in the calculation of any applicable leverage ratio or other applicable capital ratio or calculation.

"(B) LOANS DESCRIBED.—A loan referred to in subparagraph (A) is—

"(i) a loan made by a Farm Credit Bank described in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)) to a Federal Land Bank Association, a Production Credit Association, or an agricultural credit association described in that section to make loans under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or forgive those loans in accordance with section 7A of the Small Business Act [15 U.S.C. 636m], as redesignated and transferred by section 304 of this Act, and subparagraph (J) of such paragraph (37); or

"(ii) a loan made by a Federal Land Bank Association, a Production Credit Association, an agricultural credit association, or the bank for cooperatives described in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)) under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

"(c) EFFECTIVE DATE; APPLICABILITY.—This section shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

CONFLICTS OF INTEREST

Pub. L. 116–260, div. N, title III, §322, Dec. 27, 2020, 134 Stat. 2017, provided that:

"(a) DEFINITIONS.—In this section:

"(1) CONTROLLING INTEREST.—The term 'controlling interest' means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity.

"(2) COVERED ENTITY.—

"(A) DEFINITION.—The term 'covered entity' means an entity in which a covered individual directly or indirectly holds a controlling interest.

"(B) TREATMENT OF SECURITIES.—For the purpose of determining whether an entity is a covered entity, the securities owned, controlled, or held by 2 or more individuals who are related as described in paragraph (3)(B) shall be aggregated.

"(3) COVERED INDIVIDUAL.—The term 'covered individual' means—

"(A) the President, the Vice President, the head of an Executive department, or a Member of Congress; and

"(B) the spouse, as determined under applicable common law, of an individual described in subparagraph (A).

"(4) EXECUTIVE DEPARTMENT.—The term 'Executive department' has the meaning given the term in section 101 of title 5, United States Code.

"(5) MEMBER OF CONGRESS.—The term 'Member of Congress' means a Member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

"(6) EQUITY INTEREST.—The term 'equity interest' means—

"(A) a share in an entity, without regard to whether the share is—

"(i) transferable; or

"(ii) classified as stock or anything similar;

"(B) a capital or profit interest in a limited liability company or partnership; or

"(C) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subparagraph (A) or (B), respectively.

"(b) REQUIREMENT FOR DISCLOSURE REGARDING EXISTING LOANS.—For any loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) made to a covered entity before the date of enactment of this Act [Dec. 27, 2020]—

"(1) if, before the date of enactment of this Act, the covered entity submitted an application for forgiveness under section 1106 of the CARES Act (15 U.S.C. 9005) (as such section was in effect on the day before the date of enactment of this Act) with respect to such loan, not later than 30 days after the date of enactment of this Act, the principal executive officer, or individual performing a similar function, of the covered entity shall disclose to the Administrator that the entity is a covered entity; and

"(2) if, on or after the date of enactment of this Act, the covered entity submits an application for forgiveness under section 7A of the Small Business Act [15 U.S.C. 636m], as redesignated and transferred by section 304 of this Act, with respect to such loan, not later than 30 days after submitting the application, the principal executive officer, or individual performing a similar function, of the covered entity shall disclose to the Administrator [of the Small Business Administration] that the entity is a covered entity.

"(c) **BAN ON NEW LOANS.**—On and after the date of enactment of this Act [Dec. 27, 2020], a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added and amended by this Act, may not be made to a covered entity."

TEMPORARY ADMINISTRATIVE FEE WAIVER

Pub. L. 116–260, div. N, title III, §327(a), Dec. 27, 2020, 134 Stat. 2037, provided that:

"(1) **IN GENERAL.**—During the period beginning on the date of enactment of this Act [Dec. 27, 2020] and ending on September 30, 2021, and to the extent that the cost of such elimination or reduction of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) (including a recipient of assistance under the Community Advantage Pilot Program of the [Small Business] Administration) for which an application is approved or pending approval on or after the date of enactment of this Act, the Administrator [of the Small Business Administration] shall—

"(A) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)), collect no fee or reduce fees to the maximum extent possible; and

"(B) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee or reduce fees to the maximum extent possible.

"(2) **APPLICATION OF FEE ELIMINATIONS OR REDUCTIONS.**—To the extent that amounts are made available to the Administrator for the purpose of fee eliminations or reductions under paragraph (1), the Administrator shall—

"(A) first use any amounts provided to eliminate or reduce fees paid by small business borrowers under clauses (i) through (iii) of section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), to the maximum extent possible; and

"(B) then use any amounts provided to eliminate or reduce fees under 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A))."

TEMPORARY WAIVER OF TECHNICAL ASSISTANCE GRANTS MATCHING REQUIREMENTS AND FLEXIBILITY ON PRE- AND POST-LOAN ASSISTANCE

Pub. L. 116–260, div. N, title III, §329(b), Dec. 27, 2020, 134 Stat. 2042, provided that: "During the period beginning on the date of enactment of this Act [Dec. 27, 2020] and ending on September 30, 2021, the [Small Business] Administration shall waive—

"(1) the requirement to contribute non-Federal funds under section 7(m)(4)(B) of the Small Business Act (15 U.S.C. 636(m)(4)(B)); and

"(2) the limitation on amounts allowed to be expended to provide information and technical assistance under clause (i) of section 7(m)(4)(E) of the Small Business Act (15 U.S.C. 636(m)(4)(E)) and enter into third party contracts for the provision of technical assistance under clause (ii) of such section 7(m)(4)(E)."

TEMPORARY DURATION OF LOANS TO BORROWERS

Pub. L. 116–260, div. N, title III, §329(c), Dec. 27, 2020, 134 Stat. 2042, provided that:

"(1) **IN GENERAL.**—During the period beginning on the date of enactment of this Act [Dec. 27, 2020] and ending on September 30, 2021, the duration of a loan made by an eligible intermediary under section 7(m) of the Small Business Act (15 U.S.C. 636(m))—

"(A) to an existing borrower may be extended to not more than 8 years; and

"(B) to a new borrower may be not more than 8 years.

"(2) **REVERSION.**—On and after October 1, 2021, the duration of a loan made by an eligible intermediary to a borrower under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) shall be 7 years or such other amount established by the Administrator [of the Small Business Administration]."

FINDINGS

Pub. L. 114–88, div. A, §1002, Nov. 25, 2015, 129 Stat. 687, provided that: "Congress finds the following:

"(1) In 2012, Superstorm Sandy caused substantial physical and economic damage to the United States, and New York in particular.

"(2) For businesses and homeowners, the primary means of obtaining long-term Federal financial assistance in the wake of disasters such as Superstorm Sandy is through the Small Business Administration's Disaster Loan Program.

"(3) With regard to the Small Business Administration's operation of the Disaster Loan Program after Superstorm Sandy, the Government Accountability Office found that the Administration did not meet its timeliness goals for processing business loan applications.

"(4) According to the Government Accountability Office, the Small Business Administration stated that it was challenged by an unexpectedly high volume of loan applications that it received early in its response to Superstorm Sandy.

"(5) As a result, many businesses and homeowners affected by Superstorm Sandy were unable to apply for financing from the Small Business Administration."

AVAILABILITY OF FUNDS

Pub. L. 111–240, title I, §1131(c), Sept. 27, 2010, 124 Stat. 2514, provided that: "Any amounts provided to the Administrator [of the Small Business Administration] for the purposes of carrying out section 7(l) of the Small Business Act [15 U.S.C. 636(l)], as amended by subsection (a), shall remain available until expended."

MARKETING AND OUTREACH

Pub. L. 110–234, title XII, §12063(b), May 22, 2008, 122 Stat. 1408, and Pub. L. 110–246, §4(a), title XII, §12063(b), June 18, 2008, 122 Stat. 1664, 2170, provided that: "Not later than 90 days after the date of enactment of this Act [June 18, 2008], the Administrator shall create a marketing and outreach plan that—

"(1) encourages a proactive approach to the disaster relief efforts of the Administration;

"(2) makes clear the services provided by the Administration, including contact information, application information, and timelines for submitting applications, the review of applications, and the disbursement of funds;

"(3) describes the different disaster loan programs of the Administration, including how they are made available and the eligibility requirements for each loan program;

"(4) provides for regional marketing, focusing on disasters occurring in each region before the date of enactment of this Act [June 18, 2008], and likely scenarios for disasters in each such region; and

"(5) ensures that the marketing plan is made available at small business development centers and on the website of the Administration."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

["Administration" and "Administrator", referred to in Pub. L. 110–246, §12063(b), set out above, as meaning the Small Business Administration and the Administrator thereof, see section 636e of this title.]

DEFINITION OF TERMS USED IN PUB. L. 110–186

Pub. L. 110–186, §3, Feb. 14, 2008, 122 Stat. 623, provided that: "In this Act [see Short Title of 2008 Amendment note set out under section 631 of this title]—

"(1) the term 'activated' means receiving an order placing a Reservist on active duty;

"(2) the term 'active duty' has the meaning given that term in section 101 of title 10, United States Code;

"(3) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively;

"(4) the term 'Reservist' means a member of a reserve component of the Armed Forces, as described in section 10101 of title 10, United States Code;

"(5) the term 'Service Corps of Retired Executives' means the Service Corps of Retired Executives authorized by section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1));

"(6) the terms 'service-disabled veteran' and 'small business concern' have the meaning as in section 3 of the Small Business Act (15 U.S.C. 632);

"(7) the term 'small business development center' means a small business development center described in section 21 of the Small Business Act (15 U.S.C. 648); and

"(8) the term 'women's business center' means a women's business center described in section 29 of the Small Business Act (15 U.S.C. 656)."

ESTABLISHMENT OF PRE-CONSIDERATION PROCESS AND OUTREACH AND TECHNICAL ASSISTANCE PROGRAM

Pub. L. 110-186, title II, §201(b), (c), Feb. 14, 2008, 122 Stat. 627, 628, provided that:

"(b) PRE-CONSIDERATION PROCESS.—

"(1) DEFINITION.—In this subsection, the term 'eligible Reservist' means a Reservist who—

"(A) has not been ordered to active duty;

"(B) expects to be ordered to active duty during a period of military conflict; and

"(C) can reasonably demonstrate that the small business concern for which that Reservist is a key employee will suffer economic injury in the absence of that Reservist.

"(2) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act [Feb. 14, 2008], the Administrator shall establish a pre-consideration process, under which the Administrator—

"(A) may collect all relevant materials necessary for processing a loan to a small business concern under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3)) before an eligible Reservist employed by that small business concern is activated; and

"(B) shall distribute funds for any loan approved under subparagraph (A) if that eligible Reservist is activated.

"(c) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Feb. 14, 2008], the Administrator, in consultation with the Secretary of Veterans Affairs and the Secretary of Defense, may develop a comprehensive outreach and technical assistance program (in this subsection referred to as the 'program') to—

"(A) market the loans available under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3)) to Reservists, and family members of Reservists, that are on active duty and that are not on active duty; and

"(B) provide technical assistance to a small business concern applying for a loan under that section.

"(2) COMPONENTS.—The program shall—

"(A) incorporate appropriate websites maintained by the Administration, the Department of Veterans Affairs, and the Department of Defense; and

"(B) require that information on the program is made available to small business concerns directly through—

"(i) the district offices and resource partners of the Administration, including small business development centers, women's business centers, and the Service Corps of Retired Executives; and

"(ii) other Federal agencies, including the Department of Veterans Affairs and the Department of Defense.

"(3) REPORT.—

"(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter until the date that is 30 months after such date of enactment, the Administrator shall submit to Congress a report on the status of the program.

"(B) CONTENTS.—Each report submitted under subparagraph (A) shall include—

"(i) for the 6-month period ending on the date of that report—

"(I) the number of loans approved under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3));

"(II) the number of loans disbursed under that section; and

"(III) the total amount disbursed under that section; and

"(ii) recommendations, if any, to make the program more effective in serving small business concerns that employ Reservists."

RESERVIST LOANS

Pub. L. 110-186, title II, §202, Feb. 14, 2008, 122 Stat. 629, provided that:

"(a) IN GENERAL.—The Administrator and the Secretary of Defense shall develop a joint website and printed materials providing information regarding any program for small business concerns that is available to veterans or Reservists.

"(b) MARKETING.—The Administrator is authorized—

"(1) to advertise and promote the program under section 7(b)(3) of the Small Business Act [15 U.S.C. 636(b)(3)] jointly with the Secretary of Defense and veterans' service organizations; and

"(2) to advertise and promote participation by lenders in such program jointly with trade associations for banks or other lending institutions."

TEMPORARY EXTENSION AND EXPANSION OF LOAN PROGRAMS

Pub. L. 108-217, §§4-8, Apr. 5, 2004, 118 Stat. 591-594, provided for the temporary extension and expansion of certain loan programs under 15 U.S.C. 636(a) beginning on Apr. 5, 2004, and ending on Sept.

30, 2004.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Pub. L. 107-100, §6(c), Dec. 21, 2001, 115 Stat. 971, provided for special budgetary treatment of certain loans and financings by the Small Business Administration under 15 U.S.C. 636(a) during the 2-year period beginning on Oct. 1, 2002.

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106-50, title IV, §402(c), Aug. 17, 1999, 113 Stat. 246, provided for enhanced publicity of the availability of assistance during Operation Allied Force and for 120 days thereafter.

EVALUATION OF PREDISASTER MITIGATION PILOT PROGRAM

Pub. L. 106-24, §1(c), Apr. 27, 1999, 113 Stat. 39, provided that, on Jan. 31, 2003, the Administrator of the Small Business Administration was to submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of the pilot program authorized by subsec. (b)(1)(C) of this section.

CONGRESSIONAL FINDINGS REGARDING SMALL BUSINESS YEAR 2000 READINESS

Pub. L. 106-8, §2, Apr. 2, 1999, 113 Stat. 13, provided that: "Congress finds that—

"(1) the failure of many computer programs to recognize the Year 2000 may have extreme negative financial consequences in the Year 2000, and in subsequent years for both large and small businesses;

"(2) small businesses are well behind larger businesses in implementing corrective changes to their automated systems;

"(3) many small businesses do not have access to capital to fix mission critical automated systems, which could result in severe financial distress or failure for small businesses; and

"(4) the failure of a large number of small businesses due to the Year 2000 computer problem would have a highly detrimental effect on the economy in the Year 2000 and in subsequent years."

TRANSFER OF FUNDS

Pub. L. 105-135, title II, §202(b), Dec. 2, 1997, 111 Stat. 2600, provided that:

"(1) IN GENERAL.—No funds are authorized to be appropriated or otherwise provided to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F)) (as added by this section), except by transfer from another department or agency of the Federal Government to the Administration in accordance with this subsection.

"(2) LIMITATION ON AMOUNTS.—The total amount transferred to the Administration from other departments and agencies of the Federal Government to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F)) (as added by this section) shall not exceed—

"(A) \$3,000,000 for fiscal year 1998;

"(B) \$4,000,000 for fiscal year 1999; and

"(C) \$5,000,000 for fiscal year 2000."

DEFENSE LOAN AND TECHNICAL ASSISTANCE PROGRAM

Pub. L. 105-135, title V, §507, Dec. 2, 1997, 111 Stat. 2625, provided that:

"(a) DELTA PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Administrator may administer the Defense Loan and Technical Assistance program in accordance with the authority and requirements of this section.

"(2) EXPIRATION OF AUTHORITY.—The authority of the Administrator to carry out the DELTA program under paragraph (1) shall terminate when the funds referred to in subsection (g)(1) have been expended.

"(3) DELTA PROGRAM DEFINED.—In this section, the terms 'Defense Loan and Technical Assistance program' and 'DELTA program' mean the Defense Loan and Technical Assistance program that has been established by a memorandum of understanding entered into by the Administrator and the Secretary of Defense on June 26, 1995.

"(b) ASSISTANCE.—

"(1) AUTHORITY.—Under the DELTA program, the Administrator may assist small business concerns that are economically dependent on defense expenditures to acquire dual-use capabilities.

"(2) FORMS OF ASSISTANCE.—Forms of assistance authorized under paragraph (1) are as follows:

"(A) LOAN GUARANTEES.—Loan guarantees under the terms and conditions specified under this section and other applicable law.

"(B) NONFINANCIAL ASSISTANCE.—Other forms of assistance that are not financial.

"(c) ADMINISTRATION OF PROGRAM.—In the administration of the DELTA program under this section, the Administrator shall—

"(1) process applications for DELTA program loan guarantees;

"(2) guarantee repayment of the resulting loans in accordance with this section; and

"(3) take such other actions as are necessary to administer the program.

"(d) SELECTION AND ELIGIBILITY REQUIREMENTS FOR DELTA LOAN GUARANTEES.—

"(1) IN GENERAL.—The selection criteria and eligibility requirements set forth in this subsection shall be applied in the selection of small business concerns to receive loan guarantees under the DELTA program.

"(2) SELECTION CRITERIA.—The criteria used for the selection of a small business concern to receive a loan guarantee under this section are as follows:

"(A) The selection criteria established under the memorandum of understanding referred to in subsection (a)(3).

"(B) The extent to which the loans to be guaranteed would support the retention of defense workers whose employment would otherwise be permanently or temporarily terminated as a result of reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

"(C) The extent to which the loans to be guaranteed would stimulate job creation and new economic activities in communities most adversely affected by reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

"(D) The extent to which the loans to be guaranteed would be used to acquire (or permit the use of other funds to acquire) capital equipment to modernize or expand the facilities of the borrower to enable the borrower to remain in the national technology and industrial base available to the Department of Defense.

"(3) ELIGIBILITY REQUIREMENTS.—To be eligible for a loan guarantee under the DELTA program, a borrower must demonstrate to the satisfaction of the Administrator that, during any 1 of the 5 preceding operating years of the borrower, not less than 25 percent of the value of the borrower's sales were derived from—

"(A) contracts with the Department of Defense or the defense-related activities of the Department of Energy; or

"(B) subcontracts in support of defense-related prime contracts.

"(e) MAXIMUM AMOUNT OF LOAN PRINCIPAL.—With respect to each borrower, the maximum amount of loan principal for which the Administrator may provide a guarantee under this section during a fiscal year may not exceed \$1,250,000.

"(f) LOAN GUARANTY RATE.—The maximum allowable guarantee percentage for loans guaranteed under this section may not exceed 80 percent.

"(g) FUNDING.—

"(1) IN GENERAL.—The funds that have been made available for loan guarantees under the DELTA program and have been transferred from the Department of Defense to the Small Business Administration before the date of the enactment of this Act [Dec. 2, 1997] shall be used for carrying out the DELTA program under this section.

"(2) CONTINUED AVAILABILITY OF EXISTING FUNDS.—The funds made available under the second proviso under the heading 'RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE' in Public Law 103-335 (108 Stat. 2613) shall be available until expended—

"(A) to cover the costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) of loan guarantees issued under this section; and

"(B) to cover the reasonable costs of the administration of the loan guarantees."

TRADE ASSISTANCE PROGRAM FOR SMALL BUSINESS CONCERNS ADVERSELY AFFECTED BY NAFTA

Section 509 of Pub. L. 105-135 provided that: "The Administrator shall coordinate Federal assistance in order to provide counseling to small business concerns adversely affected by the North American Free Trade Agreement."

PRIVATE SECTOR LOAN SERVICING DEMONSTRATION PROGRAM

Pub. L. 104-208, div. D, title I, §104(a), Sept. 30, 1996, 110 Stat. 3009-729, provided that:

"(1) IN GENERAL.—

"(A) DEMONSTRATION PROGRAM REQUIRED.—Notwithstanding any other provision of law, the Administration shall conduct a demonstration program, within the parameters described in paragraph (2), to evaluate the comparative costs and benefits of having the Administration's portfolio of disaster loans serviced under contract rather than directly by employees of the Administration. All costs of the demonstration program shall be paid from amounts made available for the Salaries and Expenses Account of the Administration.

"(B) INITIATION DATE.—Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administration shall issue a request for proposals for the program parameters described in paragraph (2).

"(2) DEMONSTRATION PROGRAM PARAMETERS.—

"(A) LOAN SAMPLE.—The sample of loans for the demonstration program shall be randomly drawn from the Administration's portfolio of loans made pursuant to section 7(b) of the Small Business Act [15 U.S.C. 636(b)] and shall include a representative group of not less than 30 percent of all loans for residential properties, including 30 percent of all loans made during the demonstration program after the date of enactment of this Act, which loans shall be selected by the Administration on the basis of geographic distribution and such other factors as the Administration determines to be appropriate.

"(B) CONTRACT AND OPTIONS.—The Administration shall solicit and competitively award one or more contracts to service the loans included in the sample of loans described in subparagraph (A) for a term of not less than one year, with 3 one-year contract renewal options, each of which shall be exercised by the Administration unless the Administration terminates the contractor or contractors for good cause.

"(3) TERM OF DEMONSTRATION PROGRAM.—The demonstration program shall commence not later than October 1, 1997.

"(4) REPORTS.—

"(A) INTERIM REPORTS.—Not later than 120 days before the expiration of the initial 4-year contract performance period, the Administrator shall submit to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] an interim report on the conduct of the demonstration program. The contractor shall be afforded a reasonable opportunity to attach comments to each such report.

"(B) FINAL REPORT.—Not later than 120 days after the termination of the demonstration program, the Administrator shall submit to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a final report on the performance of the demonstration program, together with the recommendations of the Administrator for continuation, termination, or modification of the demonstration program."

INCREASE OF AMOUNTS FOR DISASTER LOANS

Pub. L. 103-75, Aug. 12, 1993, 107 Stat. 740, provided in part: "That notwithstanding any other provision of law, the \$500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) [now 7(d)(6)] of the Small Business Act [15 U.S.C. 636(d)(6)] shall be increased to \$1,500,000 for disasters commencing on or after April 1, 1993."

CONGRESSIONAL FINDINGS OF MICROLENDING EXPANSION ACT OF 1992

Pub. L. 102-366, title I, §112, Sept. 4, 1992, 106 Stat. 989, provided that: "The Congress finds that—

"(1) nationwide, there are many individuals who possess skills that, with certain short-term assistance, could enable them to become successfully self-employed;

"(2) many talented and skilled individuals who are employed in low-wage occupations could, with sufficient opportunity, start their own small business concerns, which could provide them with an improved standard of living;

"(3) most such individuals have little or no savings, a nonexistent or poor credit history, and no access to credit or capital with which to start a business venture;

"(4) women, minorities, and individuals residing in areas of high unemployment and high levels of poverty have particular difficulty obtaining access to credit or capital;

"(5) providing such individuals with small-scale, short-term financial assistance in the form of microloans, together with intensive marketing, management, and technical assistance, could enable them to start or maintain small businesses, to become self-sufficient, and to raise their standard of living;

"(6) banking institutions are reluctant to provide such assistance because of the administrative costs associated with processing and servicing the loans and because they lack experience in providing the type

of marketing, management, and technical assistance needed by such borrowers;

"(7) many organizations that have had successful experiences in providing microloans and marketing, management, and technical assistance to such borrowers exist throughout the Nation; and

"(8) loans from the Federal Government to intermediaries for the purpose of relending to start-up, newly established and growing small business concerns are an important catalyst to attract private sector participation in microlending."

DISADVANTAGED SMALL BUSINESS STATUS DECISIONS

Pub. L. 102-366, title II, §221, Sept. 4, 1992, 106 Stat. 999, provided that:

"(a) PUBLICATION OF DECISIONS.—A decision issued pursuant to section 7(j)(11)(F)(vii) of the Small Business Act (15 U.S.C. 636(j)(11)(F)(vii)) shall—

"(1) be made available to the protestor, the protested party, the contracting officer (if not the protestor), and all other parties to the proceeding, and published in full text; and

"(2) include findings of fact and conclusions of law, with specific reasons supporting such findings or conclusions, upon each material issue of fact and law of decisional significance regarding the disposition of the protest.

"(b) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision issued under section 7(j)(11)(F)(vii) of the Small Business Act that is issued prior to the date of enactment of this Act [Sept. 4, 1992] shall not have value as precedent in deciding any subsequent protest until such time as the decision is published in full text."

REAUTHORIZATION OF BOND WAIVER TEST PROGRAM

Pub. L. 102-190, div. A, title VIII, §813(a)–(e), Dec. 5, 1991, 105 Stat. 1424, authorized the Secretary of Defense to grant surety bond exemptions to certain participants in the Minority Small Business and Capital Ownership Development Program who were awarded construction contracts by the Department of Defense before Oct. 1, 1994.

EMERGENCY DIRECT LOANS FOR SMALL BUSINESS CONCERNS LOCATED IN COMMUNITIES ADVERSELY AFFECTED BY TROOP DEPLOYMENTS DURING PERSIAN GULF CONFLICT

Pub. L. 102-190, div. A, title X, §1087, Dec. 5, 1991, 105 Stat. 1483, authorized emergency direct loans to small business concerns located in counties in which at least 5 small business concerns suffered severe economic injury resulting from deployment, after July 31, 1990, of troops in connection with Persian Gulf conflict, provided that loan amounts could not exceed \$50,000 to any small business concern, and provided for source of loan funds, applications for loans, definitions, regulations to implement loan program, and expiration of loan authority at end of 270-day period beginning on date on which loan applications were first accepted.

TERMINATION OF MICROLOAN DEMONSTRATION PROGRAM

Pub. L. 102-140, title VI, §609(j), Oct. 28, 1991, 105 Stat. 831, as amended by Pub. L. 103-403, title II, §203, Oct. 22, 1994, 108 Stat. 4181, provided that: "The demonstration program established by subsection (h) [amending this section] shall terminate on October 1, 1997."

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

TEST PROGRAM FOR USE OF BOND WAIVER AUTHORITY TO ASSIST CERTAIN SMALL DISADVANTAGED BUSINESS CONCERNS

Pub. L. 101-189, div. A, title VIII, §833, Nov. 29, 1989, 103 Stat. 1509, which directed Secretary of Defense and Small Business Administration to establish a program for fiscal years 1990 and 1991 to test use of authority provided by subsec. (j)(13)(D) of this section, and that under the test program, the Secretary of Defense was to make every reasonable effort during each such fiscal year to award not less than 30 contracts for construction projects (including repair and alteration of existing facilities) to participants in Minority Small Business and Capital Ownership Development Program of Small Business Administration granted surety bond exemptions under such authority, was repealed by Pub. L. 102-190, div. A, title VIII, §813(f), Dec. 5, 1991, 105 Stat. 1424.

DEFINITION OF TERMS USED IN PUB. L. 100-656

Pub. L. 100-656, §2, Nov. 15, 1988, 102 Stat. 3854, as amended by Pub. L. 101-37, §3, June 15, 1989, 103 Stat. 70, provided that: "For the purposes of this Act [see Short Title of 1988 Amendment note set out under section 631 of this title]—

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

"(2) the term 'Administrator' means the Administrator of the Small Business Administration, unless otherwise indicated;

"(3) the term 'Business Opportunity Specialist' means the Administration employee responsible for providing business development assistance to Program Participants pursuant to sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a));

"(4) the term 'disadvantaged owners' means those individuals upon whom eligibility is based for participation in the Program and the award of subcontracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a));

"(5) the term 'minority owned businesses' means business concerns that are at least 51 percent owned and controlled by one or more individuals who belong to those groups described or identified pursuant to section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(1)(C));

"(6) the term 'Program' means the Minority Small Business and Capital Ownership Development Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), unless otherwise indicated;

"(7) the term 'Program Participant' means a small business concern participating in the Program; and

"(8) the term 'Program Participation Term' means the fixed period of time assigned to a Program Participant pursuant to section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) prior to the date of enactment of this Act [Nov. 15, 1988]."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES OF PUB. L. 100-656

Pub. L. 100-656, title I, §101, Nov. 15, 1988, 102 Stat. 3855, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)] remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream;

"(2) although some progress has resulted from the Program, it has generally failed to meet its objectives, which remain as valid now as when the Program was initiated;

"(3) too few concerns that have exited the Program have been prepared to compete successfully in the open marketplace on competitive procurements, and many concerns have developed an unhealthy dependency on sole-source contracts by the time they are required to leave the Program;

"(4) the application and certification process for admitting new participants to the Program is inordinately lengthy and burdensome;

"(5) the Administration has often not efficiently and equitably administered and managed the Program in a manner that provided clear lines of responsibility for implementing and monitoring many of the administrative duties under the Program;

"(6) the Administration and some program participants have given insufficient attention and support to the business development goals of the Program and instead have focused almost entirely on the size of contract awards or the number of firms certified to participate in the Program;

"(7) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of disadvantaged businesses participating in the Program;

"(8) contract support as well as business development expenses have been misused both by the Administration and Program participants and have not been equitably distributed pursuant to objective criteria;

"(9) the widespread perception of undue political influence in the operation and administration of the Program has significantly contributed to the Program's poor image and has deterred utilization of the Program by socially and economically disadvantaged concerns and by Federal procuring agencies; and

"(10) it is imperative that increased competition and other substantial reforms be accomplished in the Program in order to promote the Congressionally mandated business development objectives and purposes.

"(b) PURPOSES.—The purposes of this Act [see Short Title of 1988 Amendment note set out under section 631 of this title] therefore are to—

"(1) affirm that the Capital Ownership Development Program and the section 8(a) [15 U.S.C. 637(a)] authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

"(2) affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the Program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

"(3) ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

"(4) increase the number of small businesses owned and controlled by such individuals from which the United States may purchase products and services (including construction work); and

"(5) ensure integrity, competence, and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses."

EMPLOYEE TRAINING AND EVALUATION

Pub. L. 100-656, title IV, §410, Nov. 15, 1988, 102 Stat. 3879, as amended by Pub. L. 101-37, §18, June 15, 1989, 103 Stat. 74, provided that:

"(a) **TRAINING REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.**—(1) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) and to assist Program Participants.

"(2) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of the Small Business Act [15 U.S.C. 631 et seq.], as amended by this Act.

"(b) **PILOT PROGRAM.**—(1) Within 180 days after the effective date of this subsection [Nov. 15, 1988] the Administrator shall designate three regions of the Administration to conduct a pilot program pursuant to the provisions of this subsection. The designated regions shall contain approximately 30 per centum of the total number of Program Participants as of the time of designation.

"(2) A Business Opportunity Specialist employed in a Region designated pursuant to paragraph (1), in addition to other assigned duties and responsibilities, shall—

"(A) conduct contract negotiations on behalf of the Administration for contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) when performance will be rendered by one or more firms in such Specialist's assigned portfolio;

"(B) facilitate and otherwise assist such firms in negotiating for the receipt of contracts to be let pursuant to such section.

"(3) The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform the negotiations required pursuant to paragraph (2).

"(4) To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist employed in a region designated pursuant to paragraph (1) affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) are achieving competitiveness and furthering the business development purposes of the program.

"(5) The Administration shall establish personnel positions for Business Opportunity Specialists employed in the regions designated pursuant to paragraph (1) that are classified at a grade level of the General Schedule that are sufficient, in the opinion of the Administrator, to attract and retain highly qualified personnel.

"(c) **REPORT AND PILOT PROGRAM TERMINATION.**—(1) Within 120 days after the termination of the pilot program conducted pursuant to subsection (b), the Administration shall issue a report to the Committees on Small Business of the Senate and of the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] on the effectiveness of the pilot. Such report shall contain such recommendations for administrative or legislative change as may be appropriate.

"(2) The pilot program conducted pursuant to subsection (b) shall be terminated three years after the date on which the Committees on Small Business of the Senate and of the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] receive written

notification from the Administrator that the pilot is in full operation in each of the three designated pilot regions."

GENERAL ACCOUNTING OFFICE REPORT

Pub. L. 100-656, title V, §504, Nov. 15, 1988, 102 Stat. 3882, directed Comptroller General of the United States to conduct a review of operation of Minority Small Business and Capital Ownership Development Program authorized by subsec. (j)(10) of this section and contract assistance provided pursuant to section 637(a)(15) of this title commencing within 180 days of Nov. 15, 1988, and concluding Sept. 30, 1991, such review to report on implementation of provisions of Pub. L. 100-656 by Small Business Administration and various executive departments and agencies providing contracting opportunities to the Program, and directed Comptroller General to prepare a report summarizing findings of review, make such recommendations as may be appropriate, and transmit report to Committees on Small Business of the Senate and House of Representatives by Feb. 1, 1992.

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

Pub. L. 100-656, title V, §505(a)-(g), Nov. 15, 1988, 102 Stat. 3883, as amended by Pub. L. 101-37, §20, June 15, 1989, 103 Stat. 74; Pub. L. 101-574, title II, §211, Nov. 15, 1990, 104 Stat. 2821; Pub. L. 102-366, title II, §231(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 103-160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, established the Commission on Minority Business Development, set out its duties, powers, membership, administration, and personnel, and provided that it cease to exist within 90 days after the date that it transmitted its final report to Congress and to the President or Sept. 30, 1992, whichever was later.

LIMITATIONS ON SPENDING AUTHORITY

Pub. L. 100-656, title VIII, §802(f), Nov. 15, 1988, 102 Stat. 3899, provided that:

"(1) Any new credit authority or authority to enter into contracts provided for in this Act [see Short Title of 1988 Amendment note set out under section 631 of this title] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

"(2) No funds are authorized to be appropriated in subsequent appropriation Acts to the Administration for the purpose of making grants of financial assistance under the so called 'Business Development Expense' program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a))."

CERTIFIED LOAN PROGRAM; EXPANDED PARTICIPATION; REPORTS TO CONGRESS

Pub. L. 100-590, title I, §102(b), Nov. 3, 1988, 102 Stat. 2992, provided that: "The Administration shall take appropriate steps to expand participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act [15 U.S.C. 636(a)(19)]. An interim report shall be submitted not later than one year after date of enactment of this Act [Nov. 3, 1988] and a final report shall be submitted not later than 18 months after the date of enactment."

Similar provisions were contained in Pub. L. 100-533, title III, §302(b), Oct. 25, 1988, 102 Stat. 2693.

PIPELINE LOANS OR PREVIOUS DISASTERS

Pub. L. 99-272, title XVIII, §18006(b), Apr. 7, 1986, 100 Stat. 366, as amended by Pub. L. 99-349, title I, July 2, 1986, 100 Stat. 718, provided that: "Notwithstanding the amendments made by this section [amending sections 636 and 647 of this title], sections 18002 [amending provisions set out as a note under section 631 of this title] and 18016 [amending section 632 of this title], or any other provision of law, the Small Business Administration shall continue to accept, process, and approve loan applications under paragraphs (1) through (4) of subsection [section] 7(b) of the Small Business Act [15 U.S.C. 636(b)(1) to (4)] and shall obligate and disburse loan funds on account of disasters which occurred prior to October 1, 1985, and with respect to which a disaster declaration application was submitted prior to October 1, 1985, even if any such application is filed after the date of the enactment of this Act [Apr. 7, 1986]."

DETERMINATION OF NATURAL DISASTER BY SECRETARY OF AGRICULTURE TO BE DEEMED DISASTER DECLARATION BY ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION; DISASTERS COMMENCING BETWEEN JANUARY 1, 1983, AND SEPTEMBER 30, 1983

Pub. L. 98-166, title I, §101, Nov. 28, 1983, 97 Stat. 1079, provided that for disasters commencing between Jan. 1, 1983, through Sept. 30, 1983, determination of a natural disaster by the Secretary of Agriculture pursuant to 7 U.S.C. 1961 would be deemed a disaster declaration by the Administrator of the Small Business

Administration for purposes of determining eligibility for assistance under 15 U.S.C. 636(b)(1) for agricultural enterprises as defined in 15 U.S.C. 647(b).

REPORTS TO CONGRESS; DEFAULT RATE OF LOANS

Pub. L. 97-35, title XIX, §1907 Aug. 13, 1981, 95 Stat. 777, required the Small Business Administration to submit to Congress, not later than Feb. 28, 1984, and 1985, reports containing specific information on the aggregate number, dollar value, and default rate of all loans with respect to 15 U.S.C. 636(a)(5), (6)(C), (8)(A).

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Pub. L. 96-481, title I, §106(b), Oct. 21, 1980, 94 Stat. 2322, provided that: "Notwithstanding the provisions of subsection (a) of this section [amending subsec. (j)(10)(A)(i) of this section], for concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act [section 637(a) of this title] on the effective date of the amendment made by this section [Oct. 21, 1980], each such concern shall submit to the Small Business Administration within two months after the promulgation of final regulations issued within one hundred and twenty days after the enactment of this Act [Oct. 21, 1981] the business plan required under section 7(j)(10)(A)(i) of the Small Business Act, as amended by subsection (a) of this section [subsec. (j)(10)(A)(i) of this section]: *Provided however*, That the period of time required under section 7(j)(10)(A)(i) of the Small Business Act, as amended by subsection (a) of this section, shall be fixed as mutually agreed upon by the program participant and the Small Business Administration prior to the awarding or extending of contracts to such concern pursuant to section 8(a) of the Small Business Act after June 1, 1981, but the period shall be fixed in no case later than eighteen months after the effective date of this Act: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 8(a)(9) of the Small Business Act."

SMALL BUSINESS EMPLOYEE OWNERSHIP; CONGRESSIONAL FINDINGS AND PURPOSES

Pub. L. 96-302, title V, §§502, 503, July 2, 1980, 94 Stat. 850, 851, provided that:

"SEC. 502. The Congress hereby finds and declares that—

"(1) employee ownership of firms provides a means for preserving jobs and business activity;

"(2) employee ownership of firms provides a means for keeping a small business small when it might otherwise be sold to a conglomerate or other large enterprise;

"(3) employee ownership of firms provides a means for creating a new small business from the sale of a subsidiary of a large enterprise;

"(4) unemployment insurance programs, welfare payments, and job creation programs are less desirable and more costly for both the Government and program beneficiaries than loan guarantee programs to maintain employment in firms that would otherwise be closed, liquidated, or relocated; and

"(5) by guaranteeing loans to qualified employee trusts and similar employee organizations, the Small Business Administration can provide feasible and desirable methods for the transfer of all or part of the ownership of a small business concern to its employees.

"SEC. 503. (a) The purposes of this title [enacting sections 632(c) and 636(a)(8) of this title and provisions set out as notes under sections 631 and 636 of this title] are—

"(1) to provide that a qualified employee trust shall be eligible for loan guarantees under section 7(a) of the Small Business Act [subsec. (a) of this section] with respect to a small business concern, regardless of the percentage of stock of the concern held by the trust, and

"(2) to provide in section 505 of this Act [enacting subsec. (a)(8) of this section] authority to address the specific case in which the Small Business Administration guarantees loans under section 7(a) of the Small Business Act [subsec. (a) of this section] for purposes of providing funds to a qualified employee trust (and other employee organizations which are treated as qualified employee trusts) for the purchase, by at least 51 percent of the employees, of at least 51 percent of the stock of business which is operated for profit and which is—

"(A) a small business concern, or

"(B) a corporation which is controlled by another person if, after the plan for the purchase of such corporation is carried out, such corporation would be a small business concern.

"(b) Nothing in this title shall be construed to prohibit the Small Business Administration from making loan guarantees under section 7(a) of the Small Business Act [subsec. (a) of this section] to qualified employee trusts which own less than 51 percent of the stock of a continuing business."

DISASTER RELIEF AUTHORITY; STUDY AND REPORT ON CONSOLIDATION

Pub. L. 94-305, title I, §101, June 4, 1976, 90 Stat. 663, required the President to comprehensively review

all Federal disaster loan authorities and to report to Congress by Dec. 1, 1976, with recommendations and legislative proposals for the most effective and efficient delivery of disaster relief, including possible consolidation of authorities.

DISASTER LOANS; SPECIAL PROVISIONS FOR APPLICATIONS RECEIVED ON OR BEFORE MARCH 19, 1981; ASSISTANCE TO HARDSHIP APPLICANTS

Pub. L. 97-35, title XIX, §1916, Aug. 13, 1981, 95 Stat. 780, provided for special provisions for applications for disaster loans under 15 U.S.C. 1636(b)(1), (2), or (4) received on or before Mar. 19, 1981, with assistance to hardship applicants.

DISASTER LOANS; INTEREST RATE; CANCELLATION OF LOANS

Pub. L. 93-24, §9, Apr. 20, 1973, 87 Stat. 25, provided that: "Notwithstanding the provisions of any other law, any loan made by the Small Business Administration in connection with any disaster occurring on or after the date of enactment of this Act [Apr. 20, 1973] under sections 7(b)(1), (2), or (4) of the Small Business Act (15 U.S.C. 636(b)(1), (2), or (4)) [subsec. (b)(1), (2), or (4) of this section] shall bear interest at the rate determined under section 324 of the Consolidated Farm and Rural Development Act, as amended by section 4 of this Act [section 1964 of Title 7, Agriculture]. No portion of any such loan shall be subject to cancellation under the provisions of any law."

INTEREST RATES ON LOANS TO MEET REGULATORY STANDARDS

Pub. L. 93-237, §2(d), Jan. 2, 1974, 87 Stat. 1024, provided that: "In no case shall the interest rate charged for loans to meet regulatory standards be lower than loans made in connection with physical disasters."

ELECTION OF BENEFITS

Pub. L. 92-385, §1(c), Aug. 16, 1972, 86 Stat. 555, provided that: "Any person who (1) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act [August 16, 1972], (2) is eligible for assistance under the amendment made by subsection (a), and (3) is otherwise eligible for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits."

FUND FOR MANAGEMENT COUNSELING

Pub. L. 85-699, title VI, §602(a), (b), Aug. 21, 1958, 72 Stat. 698, provided that:

"(a) Within sixty days after the enactment of this Act [Aug. 21, 1958], each Federal Reserve bank shall pay to the United States the aggregate amount which the Secretary of the Treasury has heretofore paid to such bank under the provisions of section 13b of the Federal Reserve Act [12 U.S.C. 352a]; and such payment shall constitute a full discharge of any obligation or liability of the Federal Reserve bank to the United States or to the Secretary of the Treasury arising out of subsection (e) of said section 13b [12 U.S.C. 352a(e)] or out of any agreement thereunder.

"(b) The amounts repaid to the United States pursuant to subsection (a) of this section shall be covered into a special fund in the Treasury which shall be available for grants under section 7(d) of the Small Business Act [subsec. (d) of this section]. Any remaining balance of funds set aside in the Treasury for payments under section 13b of the Federal Reserve Act [12 U.S.C. 352a] shall be covered into the Treasury as miscellaneous receipts."

LOANS FOR MODIFICATIONS OF MINING FACILITIES AND EQUIPMENT

Pub. L. 91-173, title V, §504(d), Dec. 30, 1969, 83 Stat. 802, authorized loans under 15 U.S.C. 636(b)(5) for modifications of mining facilities and equipment pursuant to former section 202 of the Public Works and Economic Development Act of 1965 (former 42 U.S.C. 3142), which was repealed by Pub. L. 105-393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3602.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12190

Ex. Ord. No. 12190, Feb. 1, 1980, 45 F.R. 7773, established the Advisory Committee on Small and Minority Business Ownership to assist in monitoring and encouraging the placement of subcontracts by the private sector with eligible small businesses, to study and propose incentives and assistance needed by the private sector to help in the training, development, and upgrading of such businesses, to make periodic reports and recommendations to the President, and to report annually to the President and to the Congress on the activities of the Committee and provided for termination of the Committee on Dec. 31, 1980.

EXTENSION OF TERM OF ADVISORY COMMITTEE ON SMALL AND MINORITY BUSINESS OWNERSHIP

Term of Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees, which extension was revoked by the amendment of Ex. Ord. No. 12692 made by Ex. Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969.

Previous extensions of term of Advisory Committee on Small and Minority Business Ownership were contained in the following prior Executive Orders:

Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, extended term until Sept. 30, 1989.
Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, extended term until Sept. 30, 1987.
Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, extended term until Sept. 30, 1985.
Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, extended term until Sept. 30, 1984.
Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, extended term until Dec. 31, 1982.

¹ *So in original. The "; and" probably should be a period.*

² *See References in Text note below.*

³ *So in original. Probably should be "(B)".*

⁴ *So in original.*

⁵ *So in original. The closing parenthesis probably should not appear.*

⁶ *So in original. The word "and" probably should not appear.*

⁷ *So in original. No cl. (ii) has been enacted.*

⁸ *So in original. The word "a" probably should appear.*

⁹ *So in original. The comma probably should not appear.*

¹⁰ *So in original. Probably should be "therefor,".*

¹¹ *So in original. Probably should be "has".*

¹² *So in original. Two pars. (16) have been enacted.*

¹³ *See 1980 Amendment note below.*

¹⁴ *So in original. Probably should be "or (2)".*

¹⁵ *So in original. Probably should be "prior to".*

¹⁶ *So in original. No par. (2) has been enacted.*

¹⁷ *So in original. The period probably should be a semicolon.*

¹⁸ *So in original. Probably should be "paragraph (12):".*

¹⁹ *So in original. Probably should be "subclause (IV).".*

²⁰ *So in original. The word "that" probably should not appear.*

²¹ *So in original. Probably should be "(vi)".*

²² *So in original. The period probably should not appear.*

²³ *So in original. The period probably should be "; and".*

§636a. Repealed. Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781

Section, Pub. L. 91–606, title II, §231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92–385, §6, Aug. 16, 1972, 86 Stat. 559, related to small business disaster loans.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

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

§636b. Disaster loan interest rates

Any loan made under section 636a ¹ of this title and section 4452 ¹ of title 42 shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 636a ¹ and 636d of this title, and sections 3538 and 4452 ¹ of title 42 shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

(Pub. L. 91–606, title II, §234, Dec. 31, 1970, 84 Stat. 1754.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 636a of this title, referred to in text, was repealed by Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781.

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93–24, §7, Apr. 20, 1973, 87 Stat. 25.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4453 of Title 42, The Public Health and Welfare.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

¹ *See References in Text note below.*

§636c. Age of applicant for disaster loans

In the administration of any Federal disaster loan program under the authority of section 636a ¹ of this title, section 4452 ¹ of title 42, or section 233 of Public Law 91–606, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan.

(Pub. L. 91–606, title II, §235, Dec. 31, 1970, 84 Stat. 1754.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 636a of this title, referred to in text, was repealed by Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781.

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93–24, §7, Apr. 20, 1973, 87 Stat. 25.

Section 233 of Public Law 91–606, referred to in text, amended section 1820(a)(2), (f) [now 3720(a)(2), (f)] of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4454 of Title 42, The Public Health and Welfare.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

¹ [*See References in Text note below.*](#)

§636d. Disaster aid to major sources of employment

(a) Loans to disaster areas

The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulations promulgated pursuant thereto.

(b) Interest; deferred payments

Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 4418 ¹ of title 42. Any loan made under this section shall be subject to the interest requirements of section 636b of this title, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 636b of this title.

(Pub. L. 91–606, title II, §237, Dec. 31, 1970, 84 Stat. 1754.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4418 of title 42, referred to in subsec. (b), was repealed by Pub. L. 93–288, title VI, §603, May 22, 1974, 88 Stat. 164. Provisions similar to former section 4418 of Title 42, The Public Health and Welfare, are contained in section 5155 of Title 42.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4456 of Title 42, The Public Health and Welfare.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 1, 1969, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

¹ See References in Text note below.

§636e. Definitions

In this subtitle— ¹

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term "disaster area" means an area affected by a natural or other disaster, as determined for purposes of paragraph (1) or (2) of section 636(b) of this title, during the period of such declaration;

(3) the term "disaster loan program of the Administration" means assistance under section 636(b) of this title, as amended by this Act;

(4) the term "disaster update period" means the period beginning on the date on which the President declares a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 636(b) of this title, as added by this Act) and ending on the date on which such declaration terminates;

(5) the term "major disaster" has the meaning given that term in section 5122 of title 42;

(6) the term "small business concern" has the meaning given that term under section 632 of this title; and

(7) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(Pub. L. 110–234, title XII, §12052, May 22, 2008, 122 Stat. 1406; Pub. L. 110–246, §4(a), title XII, §12052, June 18, 2008, 122 Stat. 1664, 2168.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, which enacted this section and sections 636f to 636k and 657i to 657o of this title, amended sections 632, 633, and 636 of this title, enacted provisions set out as notes under sections 631 and 636 of this title, and amended provisions set out as a note under section 631 of this title. For complete classification of subtitle B to the Code, see Short Title of 2008 Amendment note under section 631 of this title and Tables.

Section 636(b) of this title, as amended by this Act, referred to in par. (3), is section 636(b) of this title, as amended by Pub. L. 110–246.

Paragraph (9) of section 636(b) of this title, as added by this Act, referred to in par. (4), is section 636(b)(9) of this title, as added by Pub. L. 110–246.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

¹ [*See References in Text note below.*](#)

§636f. Coordination of efforts between the Administrator and the Internal Revenue Service to expedite loan processing

The Administrator and the Commissioner of Internal Revenue shall, to the maximum extent practicable, ensure that all relevant and allowable tax records for loan approval are shared with loan processors in an expedited manner, upon request by the Administrator.

(Pub. L. 110–234, title XII, §12066(b), May 22, 2008, 122 Stat. 1410; Pub. L. 110–246, §4(a), title XII, §12066(b), June 18, 2008, 122 Stat. 1664, 2172.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636g. Development and implementation of major disaster response plan

(a) In general

Not later than 3 months after the date of enactment of this Act, the Administrator shall—

(1) by rule, amend the 2006 Atlantic hurricane season disaster response plan of the Administration (in this section referred to as the "disaster response plan") to apply to major

disasters; and

(2) 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 detailing the amendments to the disaster response plan.

(b) Contents

The report required under subsection (a)(2) shall include—

(1) any updates or modifications made to the disaster response plan since the report regarding the disaster response plan submitted to Congress on July 14, 2006;

(2) a description of how the Administrator plans to use and integrate District Office personnel of the Administration in the response to a major disaster, including information on the use of personnel for loan processing and loan disbursement;

(3) a description of the disaster scalability model of the Administration and on what basis or function the plan is scaled;

(4) a description of how the agency-wide Disaster Oversight Council is structured, which offices comprise its membership, and whether the Associate Deputy Administrator for Entrepreneurial Development of the Administration is a member;

(5) a description of how the Administrator plans to coordinate the disaster efforts of the Administration with State and local government officials, including recommendations on how to better incorporate State initiatives or programs, such as State-administered bridge loan programs, into the disaster response of the Administration;

(6) recommendations, if any, on how the Administration can better coordinate its disaster response operations with the operations of other Federal, State, and local entities;

(7) any surge plan for the disaster loan program of the Administration in effect on or after August 29, 2005 (including surge plans for loss verification, loan processing, mailroom, customer service or call center operations, and a continuity of operations plan);

(8) the number of full-time equivalent employees and job descriptions for the planning and disaster response staff of the Administration;

(9) the in-service and preservice training procedures for disaster response staff of the Administration;

(10) information on the logistical support plans of the Administration (including equipment and staffing needs, and detailed information on how such plans will be scalable depending on the size and scope of the major disaster [1](#);

(11) a description of the findings and recommendations of the Administrator, if any, based on a review of the response of the Administration to Hurricane Katrina of 2005, Hurricane Rita of 2005, and Hurricane Wilma of 2005; and

(12) a plan for how the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, will coordinate the provision of accommodations and necessary resources for disaster assistance personnel to effectively perform their responsibilities in the aftermath of a major disaster.

(c) Biennial disaster simulation exercise

(1) Exercise required

The Administrator shall conduct a disaster simulation exercise at least once every 2 fiscal years. The exercise shall include the participation of, at a minimum, not less than 50 percent of the individuals in the disaster reserve corps and shall test, at maximum capacity, all of the information technology and telecommunications systems of the Administration that are vital to the activities of the Administration during such a disaster.

(2) Report

The Administrator shall include a report on the disaster simulation exercises conducted under paragraph (1) each time the Administration submits a report required under section 657o of this title, as added by this Act.

§12072, June 18, 2008, 122 Stat. 1664, 2173.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Section 657o of this title, as added by this Act, referred to in subsec. (c)(2), is section 657o of this title, as added by Pub. L. 110–246.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

¹ So in original. Probably should be followed by a closing parenthesis.

§636h. Disaster planning responsibilities

(a) Assignment of Small Business Administration disaster planning responsibilities

The disaster planning function of the Administration shall be assigned to an individual appointed by the Administrator who—

- (1) is not an employee of the Office of Disaster Assistance of the Administration;
- (2) has proven management ability;
- (3) has substantial knowledge in the field of disaster readiness and emergency response; and
- (4) has demonstrated significant experience in the area of disaster planning.

(b) Responsibilities

The individual assigned the disaster planning function of the Administration shall report directly and solely to the Administrator and shall be responsible for—

- (1) creating, maintaining, and implementing the comprehensive disaster response plan of the Administration described in section 636g of this title;
- (2) ensuring there are in-service and pre-service training procedures for the disaster response staff of the Administration;
- (3) coordinating and directing the training exercises of the Administration relating to disasters, including disaster simulation exercises and disaster exercises coordinated with other government departments and agencies; and
- (4) other responsibilities relevant to disaster planning and readiness, as determined by the Administrator.

(c) Coordination

In carrying out the responsibilities described in subsection (b), the individual assigned the disaster planning function of the Administration shall coordinate with—

- (1) the Office of Disaster Assistance of the Administration;
- (2) the Administrator of the Federal Emergency Management Agency; and

(3) other Federal, State, and local disaster planning offices, as necessary.

(d) Resources

The Administrator shall ensure that the individual assigned the disaster planning function of the Administration has adequate resources to carry out the duties under this section.

(e) Report

Not later than 30 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

- (1) a description of the actions of the Administrator to assign an individual the disaster planning function of the Administration;
- (2) information detailing the background and expertise of the individual assigned; and
- (3) information on the status of the implementation of the responsibilities described in subsection (b).

(Pub. L. 110–234, title XII, §12073, May 22, 2008, 122 Stat. 1413; Pub. L. 110–246, §4(a), title XII, §12073, June 18, 2008, 122 Stat. 1664, 2175.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (e), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636i. Small business bonding threshold

(a) In general

Except as provided in subsection (b), and notwithstanding any other provision of law, for any procurement related to a major disaster, the Administrator may, upon such terms and conditions as the Administrator may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$5,000,000.

(b) Increase of amount

Upon request of the head of any Federal agency other than the Administration involved in reconstruction efforts in response to a major disaster, the Administrator may guarantee and enter into a commitment to guarantee any security against loss under subsection (a) on any total work order or contract amount at the time of bond execution that does not exceed \$10,000,000.

(c) Limitation on use of other funds

The Administrator may carry out this section only with amounts appropriated in advance specifically to carry out this section.

(Pub. L. 110–234, title XII, §12079, May 22, 2008, 122 Stat. 1416; Pub. L. 110–246, §4(a), title XII, §12079, June 18, 2008, 122 Stat. 1664, 2178.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636j. Repealed. Pub. L. 116–6, div. D, title V, §532, Feb. 15, 2019, 133 Stat. 180

Section, Pub. L. 110–234, title XII, §12085, May 22, 2008, 122 Stat. 1421; Pub. L. 110–246, §4(a), title XII, §12085, June 18, 2008, 122 Stat. 1664, 2183, related to expedited disaster assistance loan program.

§636k. Reports on disaster assistance

(a) Monthly accounting report to Congress

(1) Reporting requirements

Not later than the fifth business day of each month during the applicable period for a major disaster, the Administrator shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the Senate and to the Committee on Small Business and the Committee on Appropriations of the House of Representatives a report on the operation of the disaster loan program authorized under section 636 of this title for that major disaster during the preceding month.

(2) Contents

Each report submitted under paragraph (1) shall include—

(A) the daily average lending volume, in number of loans and dollars, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(B) the weekly average lending volume, in number of loans and dollars, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(C) the amount of funding spent over the month for loans, both in appropriations and program level, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(D) the amount of funding available for loans, both in appropriations and program level, and the percent by which each category has increased or decreased since the previous report under paragraph (1), noting the source of any additional funding;

(E) an estimate of how long the available funding for such loans will last, based on the spending rate;

(F) the amount of funding spent over the month for staff, along with the number of staff, and

the percent by which each category has increased or decreased since the previous report under paragraph (1);

(G) the amount of funding spent over the month for administrative costs, and the percent by which such spending has increased or decreased since the previous report under paragraph (1);

(H) the amount of funding available for salaries and expenses combined, and the percent by which such funding has increased or decreased since the previous report under paragraph (1), noting the source of any additional funding; and

(I) an estimate of how long the available funding for salaries and expenses will last, based on the spending rate.

(b) Weekly disaster updates to Congress for presidentially declared disasters

(1) In general

Each week during a disaster update period, the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives a report on the operation of the disaster loan program of the Administration for the area in which the President declared a major disaster.

(2) Contents

Each report submitted under paragraph (1) shall include—

(A) the number of Administration staff performing loan processing, field inspection, and other duties for the declared disaster, and the allocations of such staff in the disaster field offices, disaster recovery centers, workshops, and other Administration offices nationwide;

(B) the daily number of applications received from applicants in the relevant area, as well as a breakdown of such figures by State;

(C) the daily number of applications pending application entry from applicants in the relevant area, as well as a breakdown of such figures by State;

(D) the daily number of applications withdrawn by applicants in the relevant area, as well as a breakdown of such figures by State;

(E) the daily number of applications summarily declined by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(F) the daily number of applications declined by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(G) the daily number of applications in process from applicants in the relevant area, as well as a breakdown of such figures by State;

(H) the daily number of applications approved by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(I) the daily dollar amount of applications approved by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(J) the daily amount of loans dispersed, both partially and fully, by the Administration to applicants in the relevant area, as well as a breakdown of such figures by State;

(K) the daily dollar amount of loans disbursed, both partially and fully, from the relevant area, as well as a breakdown of such figures by State;

(L) the number of applications approved, including dollar amount approved, as well as applications partially and fully disbursed, including dollar amounts, since the last report under paragraph (1); and

(M) the declaration date, physical damage closing date, economic injury closing date, and number of counties included in the declaration of a major disaster.

(c) Periods when additional disaster assistance is made available

(1) In general

During any period for which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 636(b) of this title, as amended by this Act, the Administrator shall, on a monthly basis, submit to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of

Representatives a report on the disaster assistance operations of the Administration with respect to the applicable major disaster.

(2) Contents

Each report submitted under paragraph (1) shall specify—

- (A) the number of applications for disaster assistance distributed;
- (B) the number of applications for disaster assistance received;
- (C) the average time for the Administration to approve or disapprove an application for disaster assistance;
- (D) the amount of disaster loans approved;
- (E) the average time for initial disbursement of disaster loan proceeds; and
- (F) the amount of disaster loan proceeds disbursed.

(d) Notice of the need for supplemental funds

On the same date that the Administrator notifies any committee of the Senate or the House of Representatives that supplemental funding is necessary for the disaster loan program of the Administration in any fiscal year, the Administrator shall notify in writing the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the need for supplemental funds for that loan program.

(e) Report on contracting

(1) In general

Not later than 6 months after the date on which the President declares a major disaster, and every 6 months thereafter until the date that is 18 months after the date on which the major disaster was declared, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives regarding Federal contracts awarded as a result of that major disaster.

(2) Contents

Each report submitted under paragraph (1) shall include—

- (A) the total number of contracts awarded as a result of that major disaster;
- (B) the total number of contracts awarded to small business concerns as a result of that major disaster;
- (C) the total number of contracts awarded to women and minority-owned businesses as a result of that major disaster; and
- (D) the total number of contracts awarded to local businesses as a result of that major disaster.

(f) Report on loan approval rate

(1) In general

Not later than 6 months after the date of enactment of this Act, 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 detailing how the Administration can improve the processing of applications under the disaster loan program of the Administration.

(2) Contents

The report submitted under paragraph (1) shall include—

- (A) recommendations, if any, regarding—
 - (i) staffing levels during a major disaster;
 - (ii) how to improve the process for processing, approving, and disbursing loans under the disaster loan program of the Administration, to ensure that the maximum assistance is provided to victims in a timely manner;
 - (iii) the viability of using alternative methods for assessing the ability of an applicant to repay a loan, including the credit score of the applicant on the day before the date on which the disaster for which the applicant is seeking assistance was declared;

(iv) methods, if any, for the Administration to expedite loss verification and loan processing of disaster loans during a major disaster for businesses affected by, and located in the area for which the President declared, the major disaster that are a major source of employment in the area or are vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials);

(v) legislative changes, if any, needed to implement findings from the Accelerated Disaster Response Initiative of the Administration; and

(vi) a description of how the Administration plans to integrate and coordinate the response to a major disaster with the technical assistance programs of the Administration; and

(B) the plans of the Administrator for implementing any recommendation made under subparagraph (A).

(Pub. L. 110–234, title XII, §12091, May 22, 2008, 122 Stat. 1423; Pub. L. 110–246, §4(a), title XII, §12091, June 18, 2008, 122 Stat. 1664, 2185.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 636(b) of this title, as amended by this Act, referred to in subsec. (c)(1), is section 636(b) of this title, as amended by Pub. L. 110–246.

The date of enactment of this Act, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section is comprised of section 12091 of Pub. L. 110–246. Subsec. (g) of section 12091 of Pub. L. 110–246 enacted section 657o of this title.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636l. Semiannual report

Not later than 180 days after December 20, 2019, and semiannually thereafter, the President shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the Senate and the Committee on Small Business and the Committee on Appropriations of the House of Representatives a report on the number of loans made under the Military Reservist Economic Injury Disaster Loan program and the dollar volume of those loans. The report shall contain the subsidy rate of the disaster loan program as authorized under section 636(b) of this title with the loans made under the Military Reservist Economic Injury Disaster Loan program and without those loans included.

(Pub. L. 116–92, div. A, title VIII, §877(c), Dec. 20, 2019, 133 Stat. 1529.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2020, and not as part of the Small Business Act which comprises this chapter.

§636m. Loan forgiveness

(a) Definitions

In this section—

- (1) the term "covered loan" means a loan guaranteed under section 636(a)(36) of this title;
- (2) the term "covered mortgage obligation" means any indebtedness or debt instrument incurred in the ordinary course of business that—
 - (A) is a liability of the borrower;
 - (B) is a mortgage on real or personal property; and
 - (C) was incurred before February 15, 2020;
- (3) the term "covered operations expenditure" means a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;
- (4) the term "covered period" means the period—
 - (A) beginning on the date of the origination of a covered loan; and
 - (B) ending on a date selected by the eligible recipient of the covered loan that occurs during the period—
 - (i) beginning on the date that is 8 weeks after such date of origination; and
 - (ii) ending on the date that is 24 weeks after such date of origination;
- (5) the term "covered property damage cost" means a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;
- (6) the term "covered rent obligation" means rent obligated under a leasing agreement in force before February 15, 2020;
- (7) the term "covered supplier cost" means an expenditure made by an entity to a supplier of goods for the supply of goods that—
 - (A) are essential to the operations of the entity at the time at which the expenditure is made; and
 - (B) is made pursuant to a contract, order, or purchase order—
 - (i) in effect at any time before the covered period with respect to the applicable covered loan; or
 - (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan;
- (8) the term "covered utility payment" means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020;
- (9) the term "covered worker protection expenditure"—
 - (A) means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease

2019 (COVID–19) expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19;

(B) may include—

(i) the purchase, maintenance, or renovation of assets that create or expand—

(I) a drive-through window facility;

(II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system;

(III) a physical barrier such as a sneeze guard;

(IV) an expansion of additional indoor, outdoor, or combined business space;

(V) an onsite or offsite health screening capability; or

(VI) other assets relating to the compliance with the requirements or guidance described in subparagraph (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(ii) the purchase of—

(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation;

(II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or

(III) other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(C) does not include residential real property or intangible property;

(10) the term "eligible recipient" means the recipient of a covered loan;

(11) the term "expected forgiveness amount" means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of any—

(A) payroll costs;

(B) payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);

(C) payments on any covered rent obligation;

(D) covered utility payments;

(E) covered operations expenditures;

(F) covered property damage costs;

(G) covered supplier costs; and

(H) covered worker protection expenditures; and

(12) the terms "payroll costs" and "seasonal employer" have the meanings given those terms in section 636(a)(36) of this title. Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under section 2301 of the CARES Act, qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020, or premiums taken into account in determining the credit allowed under section 6432 of title 26. Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020.¹

(b) Forgiveness

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:

(1) Payroll costs.

(2) Any payment of interest on any covered mortgage obligation (which shall not include any

prepayment of or payment of principal on a covered mortgage obligation).

- (3) Any payment on any covered rent obligation.
- (4) Any covered utility payment.
- (5) Any covered operations expenditure.
- (6) Any covered property damage cost.
- (7) Any covered supplier cost.
- (8) Any covered worker protection expenditure.

(c) Treatment of amounts forgiven

(1) In general

Amounts which have been forgiven under this section shall be considered canceled indebtedness by a lender authorized under section 636(a) of this title.

(2) Purchase of guarantees

For purposes of the purchase of the guarantee for a covered loan by the Administrator, amounts which are forgiven under this section shall be treated in accordance with the procedures that are otherwise applicable to a loan guaranteed under section 636(a) of this title.

(3) Remittance

Not later than 90 days after the date on which the amount of forgiveness under this section is determined, the Administrator shall remit to the lender an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.

(4) Advance purchase of covered loan

(A) Report

A lender authorized under section 636(a) of this title, or, at the discretion of the Administrator, a third party participant in the secondary market, may, report to the Administrator an expected forgiveness amount on a covered loan or on a pool of covered loans of up to 100 percent of the principal on the covered loan or pool of covered loans, respectively.

(B) Purchase

The Administrator shall purchase the expected forgiveness amount described in subparagraph (A) as if the amount were the principal amount of a loan guaranteed under section 636(a) of this title.

(C) Timing

Not later than 15 days after the date on which the Administrator receives a report under subparagraph (A), the Administrator shall purchase the expected forgiveness amount under subparagraph (B) with respect to each covered loan to which the report relates.

(d) Limits on amount of forgiveness

(1) Amount may not exceed principal

The amount of loan forgiveness under this section shall not exceed the principal amount of the financing made available under the applicable covered loan.

(2) Reduction based on reduction in number of employees

(A) In general

The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing—

- (i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by
- (ii)(I) at the election of the borrower—
 - (aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or

(bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or

(II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

(B) Calculation of average number of employees

For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

(3) Reduction relating to salary and wages

(A) In general

The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

(B) Employees described

An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.

(4) Tipped workers

An eligible recipient with tipped employees described in section 203(m)(2)(A) of title 29 may receive forgiveness for additional wages paid to those employees.

(5) Exemption for re-hires

(A) In general

In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after March 27, 2020.

(B) Circumstances

A circumstance described in this subparagraph is a circumstance—

(i) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after March 27, 2020, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and

(II) not later than December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, not later than the last day of the covered period with respect to such covered loan), the eligible employer has eliminated the reduction in the number of full-time equivalent employees;

(ii) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after March 27, 2020, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and

(II) not later than December 31, 2020 (or, with respect to a covered loan made on or

after December 27, 2020, not later than the last day of the covered period with respect to such covered loan), the eligible employer has eliminated the reduction in the salary or wages of such employees; or

(iii) in which the events described in clause (i) and (ii) occur.

(6) Exemptions

The Administrator and the Secretary of the Treasury may prescribe regulations granting de minimis exemptions from the requirements under this subsection.

(7) Exemption based on employee availability

During the period beginning on February 15, 2020, and ending on December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, ending on the last day of the covered period with respect to such covered loan), the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith—

(A) is able to document—

(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, on or before the last day of the covered period with respect to such covered loan); or

(B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, ending on the last day of the covered period with respect to such covered loan), related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

(8) Limitation on forgiveness

To receive loan forgiveness under this section, an eligible recipient shall use at least 60 percent of the covered loan amount for payroll costs, and may use up to 40 percent of such amount for any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation), any payment on any covered rent obligation, any payment on any covered operations expenditure, any payment on any covered property damage cost, any payment on any covered supplier cost, any payment on any covered worker protection expenditure, or any covered utility payment.

(e) Application

Except as provided in subsection (l), an eligible recipient seeking loan forgiveness under this section shall submit to the lender that is servicing the covered loan an application, which shall include—

(1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including—

(A) payroll tax filings reported to the Internal Revenue Service; and

(B) State income, payroll, and unemployment insurance filings;

(2) documentation, including cancelled checks, payment receipts, transcripts of accounts, purchase orders, orders, invoices, or other documents verifying payments on covered mortgage

obligations, payments on covered rent obligations, payments on covered operations expenditures, payments on covered property damage costs, payments on covered supplier costs, payments on covered worker protection expenditures, and covered utility payments;

(3) a certification from a representative of the eligible recipient authorized to make such certifications that—

(A) the documentation presented is true and correct; and

(B) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, make payments on covered operations expenditures, make payments on covered property damage costs, make payments on covered supplier costs, make payments on covered worker protection expenditures, or make covered utility payments; and

(4) any other documentation the Administrator determines necessary.

(f) Prohibition on forgiveness without documentation

No eligible recipient shall receive forgiveness under this section without submitting to the lender that is servicing the covered loan the documentation required under subsection (e) or the certification required under subsection (1), as applicable.

(g) Decision

Not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the an ¹ application.

(h) Hold harmless

(1) Definition

In this subsection, the term "initial or second draw PPP loan" means a covered loan or a loan under paragraph (37) of section 636(a) of this title.

(2) Reliance

A lender may rely on any certification or documentation submitted by an applicant for an initial or second draw PPP loan or an eligible recipient or eligible entity receiving initial or second draw PPP loan that—

(A) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to initial or second draw PPP loan, including under paragraph (36) or (37) of section 636(a) of this title and under this section; and

(B) attests that the applicant, eligible recipient, or eligible entity, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance described in subparagraph (A).

(3) No enforcement action

With respect to a lender that relies on a certification or documentation described in paragraph (2) related to an initial or second draw PPP loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the initial or second draw PPP loan, if—

(A) the lender acts in good faith relating to loan origination or forgiveness of the initial or second draw PPP loan based on that reliance; and

(B) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the initial or second draw PPP loan.

(i) Tax treatment

For purposes of title 26—

(1) no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness described in subsection (b),

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in the case of an eligible recipient that is a partnership or S corporation—

(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of title 26, and

(B) except as provided by the Secretary of the Treasury (or the Secretary's delegate), any increase in the adjusted basis of a partner's interest in a partnership under section 705 of title 26 with respect to any amount described in subparagraph (A) shall equal the partner's distributive share of deductions resulting from costs giving rise to forgiveness described in subsection (b).

(j) Rule of construction

The cancellation of indebtedness on a covered loan under this section shall not otherwise modify the terms and conditions of the covered loan.

(k) Regulations

Not later than 30 days after March 27, 2020, the Administrator shall issue guidance and regulations implementing this section.

(l) Simplified application

(1) Covered loans up to \$150,000

(A) In general

With respect to a covered loan made to an eligible recipient that is not more than \$150,000, the covered loan amount shall be forgiven under this section if the eligible recipient—

(i) signs and submits to the lender a certification, to be established by the Administrator not later than 24 days after December 27, 2020, which—

(I) shall be not more than 1 page in length; and

(II) shall only require the eligible recipient to provide—

(aa) a description of the number of employees the eligible recipient was able to retain because of the covered loan;

(bb) the estimated amount of the covered loan amount spent by the eligible recipient on payroll costs; and

(cc) the total loan value;

(ii) attests that the eligible recipient has—

(I) accurately provided the required certification; and

(II) complied with the requirements under section 636(a)(36) of this title; and

(iii) retains records relevant to the form that prove compliance with such requirements—

(I) with respect to employment records, for the 4-year period following submission of the form; and

(II) with respect to other records, for the 3-year period following submission of the form.

(B) Limitation on requiring additional materials

An eligible recipient of a covered loan that is not more than \$150,000 shall not, at the time of the application for forgiveness, be required to submit any application or documentation in addition to the certification and information required to substantiate forgiveness.

(C) Records for other requirements

Nothing in subparagraph (A) or (B) shall be construed to exempt an eligible recipient from having to provide documentation independently to a lender to satisfy relevant Federal, State, local, or other statutory or regulatory requirements, or in connection with an audit as authorized under subparagraph (E).

(D) Demographic information

The certification established by the Administrator under subparagraph (A) shall include a means by which an eligible recipient may, at the discretion of the eligible recipient, submit

demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(E) Audit authority

The Administrator may—

- (i) review and audit covered loans described in subparagraph (A);
- (ii) access any records described in subparagraph (A)(iii); and
- (iii) in the case of fraud, ineligibility, or other material noncompliance with applicable loan or loan forgiveness requirements, modify—
 - (I) the amount of a covered loan described in subparagraph (A); or
 - (II) the loan forgiveness amount with respect to a covered loan described in subparagraph (A).

(2) Covered loans of more than \$150,000

(A) In general

With respect to a covered loan in an amount that is more than \$150,000, the eligible recipient shall submit to the lender that is servicing the covered loan the documentation described in subsection (e).

(B) Demographic information

The process for submitting the documentation described in subsection (e) shall include a means by which an eligible recipient may, at the discretion of the eligible recipient, submit demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(3) Forgiveness audit plan

(A) In general

Not later than 45 days after December 27, 2020, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives an audit plan that details—

- (i) the policies and procedures of the Administrator for conducting forgiveness reviews and audits of covered loans; and
- (ii) the metrics that the Administrator shall use to determine which covered loans will be audited.

(B) Reports

Not later than 30 days after the date on which the Administrator submits the audit plan required under subparagraph (A), and each month thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the forgiveness review and audit activities of the Administrator under this subsection, which shall include—

- (i) the number of active reviews and audits;
- (ii) the number of reviews and audits that have been ongoing for more than 60 days; and
- (iii) any substantial changes made to the audit plan submitted under subparagraph (A).

(Pub. L. 85–536, §2[7A], formerly Pub. L. 116–136, div. A, title I, §1106, Mar. 27, 2020, 134 Stat. 297; Pub. L. 116–142, §3(b), June 5, 2020, 134 Stat. 641; renumbered Pub. L. 85–536, §2[7A], and amended Pub. L. 116–260, div. N, title II, §276(a)(1), title III, §§304(b)(1)(A), (B), (2), 305(a), 306, 307(a), 311(b)(1), 315(b), div. EE, title II, §206(c)(1), title III, §303(g), Dec. 27, 2020, 134 Stat. 1979, 1993, 1994, 1996–1998, 2006, 2011, 3060, 3079; Pub. L. 117–2, title V, §5001(c)(1), Mar. 11, 2021, 135 Stat. 84.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (a)(9)(A), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

Section 1102 of this Act, referred to in subsec. (a)(12), means section 1102 of div. A of Pub. L. 116-136.

Section 2301 of the CARES Act, referred to in subsec. (a)(12), is section 2301 of Pub. L. 116-136, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

Section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020, referred to in subsec. (a)(12), is section 303 of div. EE of Pub. L. 116-260, Dec. 27, 2020, 134 Stat. 3075. Subsec. (d)(3)(C) of section 303 of the Act amended provisions set out as notes under section 3111 of Title 26, Internal Revenue Code. Subsecs. (a) to (c) and the rest of subsec. (d) of section 303 of the Act are not classified to the Code.

CODIFICATION

Section was formerly classified to section 9005 of this title prior to renumbering by section 304(b)(1)(A) of title III of div. N of Pub. L. 116-260.

AMENDMENTS

2021—Subsec. (a)(12). Pub. L. 117-2, §5001(c)(1)(B), which directed insertion of ", or premiums taken into account in determining the credit allowed under section 6432 of title 26" before the period at the end of par. (12), was executed by making the insertion before the period at end of the penultimate sentence, to reflect the probable intent of Congress and the addition of a duplicative final sentence by section 303(g) of Pub. L. 116-260. See 2020 Amendment note below.

Pub. L. 117-2, §5001(c)(1)(A), substituted "CARES Act," for "CARES Act or".

2020—Subsec. (a)(1). Pub. L. 116-260, div. N, §304(b)(1)(B)(i), substituted "section 636(a)(36) of this title" for "paragraph (36) of section 636(a) of this title, as added by section 1102".

Subsec. (a)(3). Pub. L. 116-260, div. N, §304(b)(2)(A)(v), added par. (3). Former par. (3) redesignated (4).

Pub. L. 116-142, §3(b)(1), added par. (3) and struck out former par. (3) which read as follows: "the term 'covered period' means the 8-week period beginning on the date of the origination of a covered loan;"

Subsec. (a)(4). Pub. L. 116-260, div. N, §306(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "the term 'covered period' means, subject to subsection (1), the period beginning on the date of the origination of a covered loan and ending the earlier of—

"(A) the date that is 24 weeks after such date of origination; or

"(B) December 31, 2020;"

Pub. L. 116-260, div. N, §304(b)(2)(A)(iii), (iv), redesignated par. (3) as (4). Former par. (4) redesignated (6).

Subsec. (a)(5) to (11). Pub. L. 116-260, div. N, §304(b)(2)(A)(i)–(iv), (vi)–(viii), added pars. (5), (7), and (9) and redesignated former pars. (4), (5), (6), and (7) as (6), (8), (10), and (11), respectively. Former par. (8) redesignated (12).

Subsec. (a)(11)(E) to (H). Pub. L. 116-260, div. N, §304(b)(2)(A)(ix), added subpars. (E) to (H).

Subsec. (a)(12). Pub. L. 116-260, div. EE, §303(g), inserted at end "Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020."

Pub. L. 116-260, div. EE, §206(c)(1), inserted at end "Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under section 2301 of the CARES Act or qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020."

Pub. L. 116-260, div. N, §315(b), amended par. (12) generally. Prior to amendment, par. (12) read as follows: "the term 'payroll costs' has the meaning given that term in paragraph (36) of section 636(a) of this title, as added by section 1102 of this Act."

Pub. L. 116-260, div. N, §304(b)(2)(A)(i), redesignated par. (8) as (12).

Subsec. (b)(5) to (8). Pub. L. 116-260, div. N, §304(b)(2)(B), added pars. (5) to (8).

Subsec. (c). Pub. L. 116-260, div. N, §304(b)(1)(B)(ii), made technical amendment to references in original act which appear in text wherever appearing as references to section 636(a) of this title.

Subsec. (d)(5)(B)(i)(II), (ii)(II). Pub. L. 116-260, div. N, §311(b)(1)(A), inserted "(or, with respect to a covered loan made on or after December 27, 2020, not later than the last day of the covered period with respect to such covered loan)" after "December 31, 2020".

Pub. L. 116-142, §3(b)(2)(A), substituted "December 31, 2020" for "June 30, 2020".

Subsec. (d)(7). Pub. L. 116-260, div. N, §311(b)(1)(B), in introductory provisions and subpar. (B) inserted

"(or, with respect to a covered loan made on or after December 27, 2020, ending on the last day of the covered period with respect to such covered loan)" after "December 31, 2020" and in subpar. (A)(ii) inserted "(or, with respect to a covered loan made on or after December 27, 2020, on or before the last day of the covered period with respect to such covered loan)" after "December 31, 2020".

Pub. L. 116–142, §3(b)(2)(B), added par. (7).

Subsec. (d)(8). Pub. L. 116–260, div. N, §304(b)(2)(C), inserted "any payment on any covered operations expenditure, any payment on any covered property damage cost, any payment on any covered supplier cost, any payment on any covered worker protection expenditure," after "rent obligation,".

Pub. L. 116–142, §3(b)(2)(B), added par. (8).

Subsec. (e). Pub. L. 116–260, div. N, §307(a)(1), substituted "Except as provided in subsection (l), an eligible" for "An eligible" in introductory provisions.

Subsec. (e)(2). Pub. L. 116–260, div. N, §304(b)(2)(D)(i), inserted "purchase orders, orders, invoices," after "transcripts of accounts," and substituted "covered rent obligations, payments on covered operations expenditures, payments on covered property damage costs, payments on covered supplier costs, payments on covered worker protection expenditures," for "covered lease obligations,".

Subsec. (e)(3)(B). Pub. L. 116–260, div. N, §304(b)(2)(D)(ii), inserted "make payments on covered operations expenditures, make payments on covered property damage costs, make payments on covered supplier costs, make payments on covered worker protection expenditures," after "rent obligation,".

Subsec. (f). Pub. L. 116–260, div. N, §307(a)(2), inserted "or the certification required under subsection (l), as applicable" after "subsection (e)".

Subsec. (h). Pub. L. 116–260, div. N, §305(a), amended subsec. (h) generally. Prior to amendment, text read as follows: "If a lender has received the documentation required under this section from an eligible recipient attesting that the eligible recipient has accurately verified the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments during covered period—

"(1) an enforcement action may not be taken against the lender under section 657t(e) of this title relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be; and

"(2) the lender shall not be subject to any penalties by the Administrator relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be."

Subsec. (i). Pub. L. 116–260, div. N, §276(a)(1), amended subsec. (i) generally. Prior to amendment, text read as follows: "For purposes of title 26, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income."

Subsec. (l). Pub. L. 116–260, div. N, §307(a)(3), added subsec. (l).

Pub. L. 116–260, div. N, §306(1), struck out subsec. (l). Text read as follows: "An eligible recipient that received a covered loan before June 5, 2020, may elect for the covered period applicable to such covered loan to end on the date that is 8 weeks after the date of the origination of such covered loan."

Pub. L. 116–142, §3(b)(3), added subsec. (l).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–2 applicable only with respect to applications for forgiveness of covered loans made under pars. (36) or (37) of section 636(a) of this title received on or after Mar. 11, 2021, see section 5001(c)(3) of Pub. L. 117–2, set out as a note under section 636 of this title.

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title II, §276(a)(2), Dec. 27, 2020, 134 Stat. 1979, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of the CARES Act [Mar. 27, 2020]."

Amendment by section 304(b)(1)(A), (B), (2) of div. N of Pub. L. 116–260 effective as if included in Pub. L. 116–136 and applicable to any loan made pursuant to section 636(a)(36) of this title before, on, or after Dec. 27, 2020, including forgiveness of such a loan, with provisions relating to exclusion of loans already forgiven, see section 304(c) of Pub. L. 116–260, set out as a note under section 636 of this title.

Pub. L. 116–260, div. N, title III, §305(b), Dec. 27, 2020, 134 Stat. 1997, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public

Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Pub. L. 116–260, div. N, title III, §307(b), Dec. 27, 2020, 134 Stat. 2000, provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act [Dec. 27, 2020], including forgiveness of such a loan."

Amendment by section 315(b) of div. N of Pub. L. 116–260 effective as if included in Pub. L. 116–136 and applicable to any loan made pursuant to section 636(a)(36) of this title before, on, or after Dec. 27, 2020, including forgiveness of such a loan, see section 315(c) of Pub. L. 116–260, set out as a note under section 636 of this title.

Except as otherwise provided, amendment by title III of div. N of Pub. L. 116–260 effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as a note under section 636 of this title.

MODIFICATION OF DATES

Pub. L. 116–260, div. N, title III, §311(b)(2), Dec. 27, 2020, 134 Stat. 2007, provided that: "The Administrator [of the Small Business Administration] and the Secretary of the Treasury may jointly, by regulation, modify any date in section 7A(d) of the Small Business Act [15 U.S.C. 636m(d)], as redesignated and transferred by section 304 of this Act [probably means section 304 of title III of div. N of Pub. L. 116–260], other than a deadline established under an amendment made by paragraph (1) [amending this section], in a manner consistent with the purposes of the Paycheck Protection Program to help businesses retain workers and meet financial obligations."

¹ So in original.

§637. Additional powers

(a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates; Indian tribes

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for

reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 636(j)(15) of this title, if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed \$7,000,000 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), (b), and (e) of section 3131 of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 692 et seq.]; and

(D) the small business is determined to be a start-up concern and such concern has not been

participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a "fair market price" shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

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

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

- (i) a personal financial statement for each disadvantaged owner;
- (ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and
- (iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 636(j)(10)(G) of this title subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

- (I) initiate a proceeding to terminate the Program Participant pursuant to section 636(j)(10)(F) of this title, subject to the right to a hearing under paragraph (9); or
- (II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

- (i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;
- (ii) the equity that disadvantaged owners have in their primary personal residences, except that

any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5.

(B) The actions referred to in subparagraph (A) are—

- (i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);
- (ii) a termination pursuant to section 636(j)(10)(F) of this title;
- (iii) a graduation pursuant to section 636(j)(10)(G) of this title; and
- (iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

- (i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;
- (ii) is untimely filed;
- (iii) is not filed in accordance with the rules of procedure governing such proceedings; or
- (iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration

pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

- (i) The approximate number of individual contract opportunities (and the number of opportunities within a class).
- (ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.
- (iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.
- (iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

- (i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 644(k) of this title for such agency; and
- (ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) which—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 657s of this title.

(15) For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which—

(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant's business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 636(j)(10)(I) of this title.

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

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 644(a) of this title, section 657a of this title, or section 657f of this title, solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 35(a) ¹ of title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 636(j)(13)(C) of this title; and

(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(C) LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 636(j)(10) of this title, or section 636(a)(20) of this title.

(B) The activities and transactions prohibited by subparagraph (A) include—

- (i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;
- (ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or
- (iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

- (I) regional administrators;
- (II) district directors;
- (III) the Associate Administrator for Minority Small Business and Capital Ownership Development;
- (IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 636(j)(10) of this title; and
- (V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed ² by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 636(j) of this title, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited ³ or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 636(j)(10) of this title and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

- (i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.
- (ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered "good cause" for the initiation of a termination proceeding pursuant to section 636(j)(10)(F) of this title.

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

(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 [15 U.S.C. 661 et seq.] shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(b) Procurement and property disposal powers; determination of small-business concerns

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1)(A) to provide—

(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 subparagraph (A). To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic services:

(i) such volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28; and for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work

injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee;

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this chapter, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this paragraph shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this paragraph, to which volunteers have been made parties.

(G) In carrying out its functions under this chapter and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988 [15 U.S.C. 7101 et seq.], the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns"

for the purpose of effectuating the provisions of this chapter. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this chapter. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern". Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7)(A) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) ¹ of title 41, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this chapter;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this chapter;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this chapter and of the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.]; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meeting of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 636(b)(3) of this title, to local public agencies (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39 data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38), veterans, and members of a reserve component of the Armed Forces.

(c) [Reserved]

(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

"(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

"(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

"(C) As used in this contract, the term 'small business concern' shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(ii) whose management and daily business operations are controlled by one or more of such individuals.

"The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

"(D) The term 'small business concern owned and controlled by women' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

"(ii) whose management and daily business operations are controlled by one or more women.

"(E) The term 'small business concern owned and controlled by veterans' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

"(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

"(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and

controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

"(G) In this contract, the term 'qualified HUBZone small business concern' has the meaning given that term in section 31(b) ⁴.

"(H) In this contract, the term 'small business concern owned and controlled by service-disabled veterans' has the meaning given that term in section 3(q) ⁴."

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed \$1,000,000, in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

- (i) is to be awarded, or was let, pursuant to the negotiated method of procurement,
- (ii) is required to include the clause stated in paragraph (3),
- (iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000 in the case of all other contracts, and
- (iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to

pay such damages, or the amounts thereof, shall be subject to chapter 71 of title 41.

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

- (I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;
- (II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and
- (III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

- (i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.
- (ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

- (i) is to be awarded pursuant to the formal advertising method of procurement,
- (ii) is required to contain the clause stated in paragraph (3) of this subsection,
- (iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, and
- (iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in

excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5), and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

- (i) review and approve subcontracting plans submitted by their subcontractors;
- (ii) monitor subcontractor compliance with their approved subcontracting plans;
- (iii) ensure that subcontracting reports are submitted by their subcontractors when required;
- (iv) acknowledge receipt of their subcontractors' reports;
- (v) compare the performance of their subcontractors to subcontracting plans and goals; and
- (vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;

(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan;

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns;

(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate that procedures have been adopted to substantiate the credit the successful offeror or bidder will elect to receive under paragraph (16)(A);

(H) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in accordance with subparagraph (D) of this paragraph, including—

- (i) the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and
- (ii) efforts to identify and award subcontracts to such small business concerns; and

(I) a representation that the offeror or bidder will—

- (i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and
- (ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).

(7) The head of the contracting agency shall ensure that—

(A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

(8) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(9) MATERIAL BREACH.—The failure of any contractor or subcontractor to comply in good faith with—

- (A) the clause contained in paragraph (3) of this subsection,
- (B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract, or
- (C) assurances provided under paragraph (6)(E),

shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor.

(10) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(11) 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 as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

(12) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the Mentor-Protege Program established under section 4902 of title 10 shall be granted credit for such assistance in accordance with subsection (f) of such section.

(13) PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term "covered contract" means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 30 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

(C) PERFORMANCE.—A contracting officer for a covered contract—

(i) shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor; and

(ii) may enter or modify past performance information of the prime contractor in connection with the unjustified failure to make a full or timely payment to a subcontractor subject to this

paragraph before or after close-out of the covered contract.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (F).

(E) COOPERATION.—

(i) IN GENERAL.—Once a contracting officer determines, with respect to the past performance of a prime contractor, that there was an unjustified failure by the prime contractor on a covered contract to make a full or timely payment to a subcontractor covered by subparagraph (B) or (C), the prime contractor is required to cooperate with the contracting officer, who shall consult with the Director of Small Business Programs or the Director of Small and Disadvantaged Business Utilization acting pursuant to section 644(k)(6) of this title and other representatives of the Government, regarding correcting and mitigating the unjustified failure to make a full or timely payment to a subcontractor.

(ii) DURATION.—The duty of cooperation under this subparagraph for a prime contractor described in clause (i) continues until the subcontractor is made whole or the determination of the contracting officer determination is no longer effective, and regardless of performance or close-out status of the covered contract.

(F) REGULATIONS.—Not later than 1 year after September 27, 2010, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41 shall amend the Federal Acquisition Regulation issued under section 1303(a) of title 41 to—

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14) An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16) CREDIT FOR CERTAIN SMALL BUSINESS CONCERN SUBCONTRACTORS.—

(A) IN GENERAL.—For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with a Federal agency, the prime contractor may elect to receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the total dollar value of any subcontracts awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more Federal agencies, or to one contract with more than one Federal agency, the prime contractor may only receive credit for first tier subcontractors that are small business concerns.

(B) COLLECTION AND REVIEW OF DATA ON SUBCONTRACTING PLANS.—The head of each contracting agency shall ensure that the agency—

(i) collects and reports data on the extent to which prime contractors of the agency meet the

goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(ii) periodically reviews data collected and reported pursuant to clause (i) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection.

(C) **RULE OF CONSTRUCTION.**—Nothing in this paragraph shall be construed to allow a Federal agency to establish a goal for an ⁵ number of subcontracts with a subcontractor at any tier for a prime contractor otherwise eligible to receive credit under this paragraph.

(17) **PAST PERFORMANCE RATINGS FOR CERTAIN SMALL BUSINESS SUBCONTRACTORS.**—Upon request by a small business concern that performed as a first tier subcontractor on a covered contract (as defined in paragraph (13)(A)), the prime contractor for such covered contract shall submit to such small business concern a record of past performance for such small business concern with respect to such covered contract. If a small business concern elects to use such record of past performance, a contracting officer shall consider such record of past performance when evaluating an offer for a prime contract made by such small business concern.

(e) Covered executive agency activities; procurement notice; publication; time limitations

(1) Except as provided in subsection (g)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(ii) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall publish a notice described in subsection (f);

(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000;

(C) an executive agency awarding a contract for property or services for a price exceeding \$100,000, or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 1708(d) of title 41; or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph

(1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Contents of notice

Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(g) Exempted, etc., activities of executive agency

(1) A notice is not required under subsection (e)(1) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of this title;

(D) the procurement is made against an order placed under a requirements contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one

source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of title 41 or paragraph (2), (3), (4), (5), or (7) of section 3204(a) of title 10.

(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h) Award of contracts; procedures other than competitive ones; exceptions

(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of title 41 ¹ (without further delegation); and

(B) all other requirements applicable to the use of such procedures under division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 or sections 3201 through 3205 of title 10, as appropriate, have been satisfied.

(2) The same exceptions as are provided in paragraphs (3) and (4) of section 3304(e) of title 41 or paragraphs (3) and (4) of section 3204(e) of title 10 shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 3304(e)(1) of title 41 or section 3204(e)(1) of title 10, as appropriate.

(i) Availability; complete solicitation package; fees

An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) "Executive agency" defined

For purposes of this section, the term "executive agency" has the meaning provided such term in section 133 of title 41.

(k) Notices of subcontracting opportunities

(1) In general

Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

- (A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and
- (B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of \$10,000.

(2) Content of notice

The notice of a subcontracting opportunity shall include—

- (A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and
- (B) the due date for receipt of offers.

(l) Management assistance for small businesses affected by military operations

(1) In general

The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict.

(2) Definition of period of military conflict

In this subsection, the term "period of military conflict" means—

- (A) a period of war declared by the Congress;
- (B) a period of national emergency declared by the Congress or by the President; or
- (C) a period of a contingency operation, as defined in section 101(a) of title 10.

(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 2101(1) of title 41.

(B) Small business concern owned and controlled by women

The term "small business concern owned and controlled by women" has the meaning given such term in section 632(n) of this title, except that ownership shall be determined without regard to any community property law.

(2) Authority to restrict competition

In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

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

(E) each of the concerns is certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator as a small business concern owned and controlled by women.

(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)(E)); 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)(E).

(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)(E).

(C) Penalties

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18; and

(ii) sections 3729 through 3733 of title 31.

(6) Provision of data

Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(7) Authority for sole source contracts for economically disadvantaged small business concerns owned and controlled by women

A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women described in paragraph (2)(A) and certified under paragraph (2)(E) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses described in paragraph (2)(A) will submit offers;

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

(i) \$7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and

reasonable price.

(8) Authority for sole source contracts for small business concerns owned and controlled by women in substantially underrepresented industries

A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women certified under paragraph (2)(E) that is in an industry in which small business concerns owned and controlled by women are substantially underrepresented (as determined by the Administrator under paragraph (3)) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses in an industry that has received a waiver under paragraph (3) will submit offers;

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

(i) \$7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

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

(n) Business grants and cooperative agreements

(1) In general

In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

(2) Matching requirement

Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

(Pub. L. 85–536, §2[8], July 18, 1958, 72 Stat. 389; Pub. L. 87–305, §§7, 8, Sept. 26, 1961, 75 Stat. 667, 668; Pub. L. 88–560, title III, §305(c), Sept. 2, 1964, 78 Stat. 786; Pub. L. 89–754, title X, §1017, Nov. 3, 1966, 80 Stat. 1295; Pub. L. 90–104, title I, §§105–107, Oct. 11, 1967, 81 Stat. 268, 269; Pub. L. 91–375, §6(g), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–89, title V, §501, Aug. 4, 1977, 91 Stat. 561; Pub. L. 95–507, title II, §§202(a), 211, Oct. 24, 1978, 92 Stat. 1761, 1767; Pub. L. 95–510, §101, Oct. 24, 1978, 92 Stat. 1780; Pub. L. 96–302, title I, §118(b), July 2, 1980, 94 Stat. 840; Pub. L. 96–481, title I, §§101, 105, Oct. 21, 1980, 94 Stat. 2321, 2322; Pub. L. 98–47, §§1(a), 2, 3, July 13, 1983, 97 Stat. 243; Pub. L. 98–72, §1(a), Aug. 11, 1983, 97 Stat. 403; Pub. L. 98–362, §5(a), July 16, 1984, 98 Stat. 433; Pub. L. 98–577, title IV, §§401, 402, 404(a), Oct. 30, 1984, 98 Stat. 3079, 3082; Pub. L. 99–272, title XVIII, §18015(b)–(d), Apr. 7, 1986, 100 Stat. 370, 371; Pub. L. 99–500, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–147, 1783–151, 1783–152, and Pub. L. 99–591, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–147, 3341–151, 3341–152; Pub. L. 99–567, §§1(a), 2, 3, Oct. 27, 1986, 100 Stat. 3188; Pub. L. 99–661, div. A, title IX, formerly title IV, §§921(b)(2), (c)(1), 922(a), (d)(1), Nov. 14, 1986, 100 Stat. 3927, 3930, 3932, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(b)(3), Apr. 21, 1987, 101 Stat.

288; Pub. L. 100–533, title II, §§201, 202, Oct. 25, 1988, 102 Stat. 2690, 2692; Pub. L. 100–590, title I, §§127(a), (b), 131(b), Nov. 3, 1988, 102 Stat. 3001, 3003, 3004; Pub. L. 100–656, title II, §§201(b), 207(a), (c), 209, title III, §§303(b)–(e), (g), (h), 304(a), title IV, §§402–404, 407, 409, title V, §501, Nov. 15, 1988, 102 Stat. 3858, 3861, 3863, 3869, 3870, 3872–3874, 3876, 3878, 3880; Pub. L. 101–37, §§6(b), (d), 7(b), 10(c), (e), 12–14, 16, 17, June 15, 1989, 103 Stat. 72–74; Pub. L. 101–162, title V, (3), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101–510, div. A, title VIII, §806(e)(2), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101–574, title II, §§204(b), 207, 210, 244, Nov. 15, 1990, 104 Stat. 2819–2821, 2827; Pub. L. 102–190, div. A, title VIII, §814(c), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–191, §3, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102–366, title II, §232(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 102–564, title III, §§303(a), 304, Oct. 28, 1992, 106 Stat. 4262; Pub. L. 103–355, title I, §1055(b)(2), title IV, §§4202(d), 4404(b), title VII, §7106(b), Oct. 13, 1994, 108 Stat. 3265, 3345, 3349, 3375; Pub. L. 103–403, title IV, §§401(a)(1), 407, 415, Oct. 22, 1994, 108 Stat. 4190, 4192, 4198; Pub. L. 104–106, div. D, title XLIII, §4321(c)(1), (2), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105–85, div. A, title VIII, §850(e)(1), Nov. 18, 1997, 111 Stat. 1848; Pub. L. 105–135, title IV, §§415, 416(a), (c), title VI, §603(a), title VII, §708, Dec. 2, 1997, 111 Stat. 2619, 2620, 2631, 2637; Pub. L. 106–50, title III, §303(a), title V, §501, Aug. 17, 1999, 113 Stat. 243, 247; Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–209; Pub. L. 106–554, §1(a)(8) [§2], §1(a)(9) [title V, §504(a), title VI, §615(b), title VIII, §§803, 807, 809, 811], Dec. 21, 2000, 114 Stat. 2763, 2763A–666, 2763A–695, 2763A–701, 2763A–702, 2763A–706, 2763A–708; Pub. L. 108–447, div. K, title I, §§132(b), (c), 141(a), 144, Dec. 8, 2004, 118 Stat. 3453, 3455; Pub. L. 111–240, title I, §§1322, 1334, Sept. 27, 2010, 124 Stat. 2540, 2542; Pub. L. 112–239, div. A, title XVI, §§1653(a), 1654, 1696(b)(2), 1697(a), Jan. 2, 2013, 126 Stat. 2081, 2083, 2091; Pub. L. 113–66, div. A, title XVI, §1614(a), Dec. 26, 2013, 127 Stat. 948; Pub. L. 113–291, div. A, title VIII, §825(a), Dec. 19, 2014, 128 Stat. 3437; Pub. L. 114–92, div. A, title VIII, §864(a), Nov. 25, 2015, 129 Stat. 927; Pub. L. 114–328, div. A, title XVIII, §§1821(a), 1822, 1832(c), Dec. 23, 2016, 130 Stat. 2654, 2660; Pub. L. 115–91, div. A, title XVII, §§1701(a)(4)(C), 1706, Dec. 12, 2017, 131 Stat. 1796, 1808; Pub. L. 116–92, div. A, title VIII, §§870, 877(d), Dec. 20, 2019, 133 Stat. 1524, 1530; Pub. L. 116–283, div. A, title VIII, §§864(1), 868(b), Jan. 1, 2021, 134 Stat. 3784, 3787; Pub. L. 117–81, div. A, title XVII, §1702(e)(2), Dec. 27, 2021, 135 Stat. 2156; Pub. L. 117–263, div. A, title VIII, §856(e)(2), Dec. 23, 2022, 136 Stat. 2726; Pub. L. 118–31, div. A, title VIII, §862(a), Dec. 22, 2023, 137 Stat. 346.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsecs. (a)(2)(C), (21)(D), and (b)(13), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. Title IV of the Small Business Investment Act of 1958 is classified generally to subchapter IV–A (§692 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (a)(13), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 35(a) of title 41, referred to in subsecs. (a)(17)(B)(iii) and (b)(7)(B), was struck out and former section 35(b) of Title 41, Public Contracts, redesignated section 35(a) by Pub. L. 103–355, title VII, §7201(1), Oct. 13, 1994, 108 Stat. 3378. Section 35 of title 41 was subsequently repealed and restated as sections 6501(1) and 6502 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 6510 of Title 41 now provides for determination of "regular dealer" by Secretary of Labor. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The Program Fraud Civil Remedies Act of 1986, referred to in subsec. (a)(18)(C)(iv), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Women's Business Ownership Act of 1988, referred to in subsec. (b)(1)(G), is Pub. L. 100–533, Oct.

25, 1988, 102 Stat. 2689. Title IV of the Act is classified generally to chapter 97 (§7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 631 of this title and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (b)(14), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

Sections 3, 8, and 31 of the Small Business Act, referred to in subsec. (d)(3)(C), (E)(ii), (G), (H), are classified to sections 632, 637, and 657a, respectively, of this title.

The General Schedule, referred to in subsec. (h)(1)(A)(ii), is set out under section 5332 of Title 5.

Section 414 of title 41, referred to in subsec. (h)(1)(A)(iii), was amended generally by Pub. L. 108–136, div. A, title XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, the substance of par. (3) was restated in subsec. (c)(1) of section 414. Section 414(c) of title 41 was subsequently repealed and restated as section 1702(c) of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

CODIFICATION

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

In subsec. (a)(2), "subsections (a), (b), and (e) of section 3131 of title 40" substituted for "subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (d)(4)(F)(ii), "chapter 71 of title 41" substituted for "the Contract Disputes Act of 1978 (41 U.S.C. 601–613)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d)(13)(E), "section 1302(a) of title 41" substituted for "section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a))" and "section 1303(a) of title 41" substituted for "section 25 of such Act" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (e)(2)(A)(i), "section 1708(d) of title 41" substituted for "section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (g)(2), "paragraph (2), (3), (4), (5), or (7) of section 3304(a) of title 41" substituted for "paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (h)(1)(B), "division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (h)(2), "paragraphs (3) and (4) of section 3304(e) of title 41" substituted for "section 303(f)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(2))" and "section 3304(e)(1) of title 41 or section 2304(f)(1) of title 10" substituted for "section 303(f)(1) of such Act or section 2304(f)(1) of such title" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (j), "section 133 of title 41" substituted for "section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (m)(1)(A), "section 2101(1) of title 41" substituted for "section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

Prior similar provisions were contained in sections 207(b)(2), (b)(4), 208, 210, 212 and 216 of act July 30, 1953, ch. 282, title II, 67 Stat. 235–239, as amended by acts Aug. 9, 1955, ch. 628, §§2, 5, 7, 69 Stat. 547, 550; Feb. 2, 1956, ch. 29, §§2, 3, 70 Stat. 10, which were previously classified to this section and sections 636, 639, 641, and 645 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2023—Subsec. (d)(13)(B)(i). Pub. L. 118–31, §862(a)(1), substituted "30 days" for "90 days".

Subsec. (d)(13)(C). Pub. L. 118–31, §862(a)(2), inserted dash after "contract" and cl. (i) designation before "shall" and added cl. (ii).

Subsec. (d)(13)(D). Pub. L. 118–31, §862(a)(3), substituted "subparagraph (F)" for "subparagraph (E)".

Subsec. (d)(13)(E), (F). Pub. L. 118–31, §862(a)(4), (5), added subpar. (E) and redesignated former subpar. (E) as (F).

2022—Subsec. (d)(12). Pub. L. 117–263 substituted "the Mentor-Protege Program established under section 4902 of title 10" for "the pilot Mentor-Protege Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2301 note)" and "subsection (f)" for "subsection (g)".

2021—Subsec. (a)(1)(D)(i)(II). Pub. L. 116–283, §864(1)(A), substituted "\$7,000,000" for "\$5,000,000".

Subsec. (d)(17). Pub. L. 116–283, §868(b), amended par. (17) generally. Prior to amendment, par. (17) related to pilot program providing past performance ratings for other small business subcontractors.

Subsec. (g)(2). Pub. L. 117–81, §1702(e)(2)(A), substituted "section 3204(a)" for "section 2304(c)".

Subsec. (h)(1)(B). Pub. L. 117–81, §1702(e)(2)(B)(i), substituted "sections 3201 through 3205" for "chapter 137".

Subsec. (h)(2). Pub. L. 117–81, §1702(e)(2)(B)(ii), substituted "paragraphs (3) and (4) of section 3204(e)" for "section 2304(f)(2)" and "section 3204(e)(1)" for "section 2304(f)(1)".

Subsec. (m)(7)(B)(i). Pub. L. 116–283, §864(1)(B)(i), substituted "\$7,000,000" for "\$6,500,000".

Subsec. (m)(8)(B)(i). Pub. L. 116–283, §864(1)(B)(ii), substituted "\$7,000,000" for "\$6,500,000".

2019—Subsec. (d)(6)(G) to (I). Pub. L. 116–92, §870(b), added subpar. (G), redesignated former subpars. (G) and (H) as (H) and (I), respectively, and realigned margins.

Subsec. (d)(16). Pub. L. 116–92, §870(a), amended par. (16) generally. Prior to amendment, par. (16) related to credit for certain subcontractors.

Subsec. (l). Pub. L. 116–92, §877(d), designated existing provisions as par. (1) and inserted heading, struck out "(as defined in section 636(n)(1) of this title)" before period at end, and added par. (2).

2017—Subsec. (d)(3)(G). Pub. L. 115–91, §1701(a)(4)(C), substituted "section 31(b)" for "section 3(p) of the Small Business Act".

Subsec. (d)(17)(A). Pub. L. 115–91, §1706(b), substituted "paragraph (13)(A)" for "paragraph 13(A)".

Subsec. (d)(17)(G)(i). Pub. L. 115–91, §1706(a)(1)(A), inserted "and, set forth separately, the number of small business exporters," after "small business concerns".

Subsec. (d)(17)(G)(ii). Pub. L. 115–91, §1706(a)(1)(B), inserted ", set forth separately by applications from small business concerns and from small business exporters," after "applications".

Subsec. (d)(17)(H). Pub. L. 115–91, §1706(a)(2), amended subpar. (H) generally. Prior to amendment, text read as follows: "In this paragraph, the term 'appropriate official' means—

"(i) a commercial market representative;

"(ii) another individual designated by the senior official appointed by the Administrator with responsibilities under sections 637, 644, 657a, and 657f of this title; or

"(iii) the Office of Small and Disadvantaged Business Utilization of a Federal agency, if the head of the Federal agency and the Administrator agree."

2016—Subsec. (d)(3)(H). Pub. L. 114–328, §1832(c), added subpar. (H).

Subsec. (d)(9). Pub. L. 114–328, §1821(a), inserted par. heading, added subpar. (C), and realigned margins.

Subsec. (d)(17). Pub. L. 114–328, §1822, added par. (17).

2015—Subsec. (a)(17)(A). Pub. L. 114–92, §864(a)(1), substituted "any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 644(a) of this title, section 657a of this title, or section 657f of this title," for "any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 644 of this title".

Subsec. (a)(17)(C). Pub. L. 114–92, §864(a)(2), added subpar. (C).

2014—Subsec. (m)(2)(E). Pub. L. 113–291, §825(a)(1), amended subpar. (E) generally. Prior to amendment, text read as follows: "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."

Subsec. (m)(5). Pub. L. 113–291, §825(a)(2), substituted "paragraph (2)(E)" for "paragraph (2)(F)" wherever appearing.

Subsec. (m)(7), (8). Pub. L. 113–291, §825(a)(3), added pars. (7) and (8).

2013—Subsec. (a)(14). Pub. L. 112–239, §1696(b)(2), added par. (14) and struck out former par. (14) which read as follows:

"(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

"(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

"(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

"(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 644(o) of this title.

"(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 644(o) of this title for the same industry category."

Subsec. (d)(6)(D). Pub. L. 113–66, §1614(a)(1), substituted ", and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—" for semicolon at end and added cls. (i) to (vi).

Subsec. (d)(6)(G), (H). Pub. L. 113–66, §1614(a)(2), (3), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (d)(7), (8). Pub. L. 112–239, §1653(a)(1), (2), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (d)(9). Pub. L. 112–239, §1653(a)(3), substituted "shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor" for "shall be a material breach of such contract or subcontract" in concluding provisions.

Pub. L. 112–239, §1653(a)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (d)(10). Pub. L. 112–239, §1653(a)(1), redesignated par. (9) as (10). Former par. (10) redesignated (11).

Subsec. (d)(11). Pub. L. 112–239, §1653(a)(1), redesignated par. (10) as (11). Former par. (11) redesignated (12).

Subsec. (d)(11)(C). Pub. L. 112–239, §1653(a)(4), substituted "as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors" for ", either on a contract-by-contract basis, or in the case contractors".

Subsec. (d)(12), (13). Pub. L. 112–239, §1653(a)(1), redesignated pars. (11) and (12) as (12) and (13), respectively.

Subsec. (d)(14), (15). Pub. L. 112–239, §1653(a)(5), added pars. (14) and (15).

Subsec. (d)(16). Pub. L. 113–66, §1614(a)(4), added par. (16).

Subsec. (k)(1). Pub. L. 112–239, §1654, substituted "on the appropriate Federal Web site (as determined by the Administrator)" for "in the Commerce Business Daily".

Subsec. (m)(2)(D) to (F). Pub. L. 112–239, §1697(a), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: "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;"

2010—Subsec. (d)(6)(G). Pub. L. 111–240, §1322, added subpar. (G).

Subsec. (d)(12). Pub. L. 111–240, §1334, added par. (12).

2004—Subsec. (b)(1)(A). Pub. L. 108–447, §132(b), (c), temporarily struck out cl. (ii), substituted "to provide technical, managerial, and informational aids to small business concerns—" for "to provide—

"(i) technical, managerial, and informational aids to small business concerns—",

redesignated subcls. (I) to (IV) of former cl. (i) as cls. (i) to (iv), respectively, substituted a period for "; and" at end of cl. (iv), and redesignated items (aa) and (bb) of former subcl. (II) as subcls. (I) and (II), respectively.

Subsec. (b)(1)(B). Pub. L. 108-447, §141(a), substituted "purposes of subparagraph (A). To facilitate" for "purposes of subparagraph (A); and to facilitate", "shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any" for "may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any", and "and the management of the contributions received." for period at end.

Subsec. (b)(17). Pub. L. 108-447, §144, inserted before period at end ", veterans, and members of a reserve component of the Armed Forces".

2000—Subsec. (a)(15)(A). Pub. L. 106-554, §1(a)(9) [title VIII, §807], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "is a not-for-profit organization chartered by the State of Hawaii,".

Subsec. (b)(1)(A). Pub. L. 106-554, §1(a)(9) [title V, §504(a)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, including information on the benefits and risks of franchising, by disseminating such information, and by such other activities as are deemed appropriate by the Administration; and In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official."

Subsec. (b)(1)(B). Pub. L. 106-554, §1(a)(9) [title VIII, §809], inserted at end "Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation."

Subsec. (d)(1). Pub. L. 106-554, §1(a)(9) [title VIII, §803(1)], inserted "small business concerns owned and controlled by veterans," after "small business concerns," the first place appearing in the first and second sentences.

Subsec. (d)(3)(A). Pub. L. 106-554, §1(a)(9) [title VIII, §803(2)(A)], inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans," in two places.

Subsec. (d)(3)(F). Pub. L. 106-554, §1(a)(9) [title VIII, §803(2)(B)], inserted "small business concern owned and controlled by service-disabled veterans," after "small business concern owned and controlled by veterans,".

Subsec. (d)(4)(D). Pub. L. 106-554, §1(a)(9) [title VIII, §803(3)], inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans,".

Pub. L. 106-554, §1(a)(9) [title VI, §615(b)], inserted "qualified HUBZone small business concerns," after "small business concerns,".

Subsec. (d)(4)(E), (6)(A), (C), (F), (10)(B). Pub. L. 106-554, §1(a)(9) [title VIII, §803(3)], inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans,".

Subsec. (e)(1)(A). Pub. L. 106-398, §1 [[div. A], title VIII, §810(c)(1)], substituted "publish" for "furnish for publication by the Secretary of Commerce" in concluding provisions.

Subsec. (e)(2). Pub. L. 106-398, §1 [[div. A], title VIII, §810(c)(2)], added par. (2) and struck out former par. (2) which read as follows: "The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1)."

Subsec. (e)(3). Pub. L. 106-398, §1 [[div. A], title VIII, §810(c)(3)], substituted "publish a notice of solicitation" for "furnish a notice to the Secretary of Commerce" in introductory provisions and struck out "by the Secretary of Commerce" after "notice is published" in subpar. (A).

Subsec. (m). Pub. L. 106-554, §1(a)(9) [title VIII, §811], added subsec. (m).

Subsec. (n). Pub. L. 106-554, §1(a)(8) [§2], added subsec. (n).

1999—Subsec. (d)(1). Pub. L. 106-50, §501(a), inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns," in two places.

Subsec. (d)(3)(A). Pub. L. 106-50, §501(b)(1), inserted "small business concerns owned and controlled by veterans," after "small business concerns," in two places.

Subsec. (d)(3)(E). Pub. L. 106-50, §501(b)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (d)(3)(F). Pub. L. 106-50, §501(b)(2), (3), redesignated subpar. (E) as (F) and inserted "small business concern owned and controlled by veterans," after "small business concern,". Former subpar. (F) redesignated (G).

Subsec. (d)(3)(G). Pub. L. 106-50, §501(b)(2), redesignated subpar. (F) as (G).

Subsec. (d)(4)(D), (E), (6)(A), (C), (F), (10)(B). Pub. L. 106-50, §501(c), inserted "small business concerns owned and controlled by veterans," after "small business concerns," the first place appearing.

Subsec. (I). Pub. L. 106-50, §303(a), added subsec. (I).

1997—Subsec. (b)(16). Pub. L. 105-135, §708(3), struck out the par. (16) added by Pub. L. 100-590, §127(b). See 1988 Amendment note below.

Subsec. (b)(17). Pub. L. 105-135, §708, added par. (17).

Subsec. (d)(1). Pub. L. 105-135, §603(a)(1)(B), inserted "qualified HUBZone small business concerns," after "small business concerns," in second sentence.

Pub. L. 105-135, §603(a)(1)(A), which directed substitution of ", qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals" for ", small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence, was executed by making the substitution for ", small business concerns owned and controlled by socially and economically disadvantaged individuals" to reflect the probable intent of Congress and the amendment by Pub. L. 104-106, §4321(c)(1)(A). See 1996 Amendment note below.

Subsec. (d)(3)(A). Pub. L. 105-135, §603(a)(2)(A), inserted "qualified HUBZone small business concerns," after "small business concerns," in two places.

Subsec. (d)(3)(F). Pub. L. 105-135, §603(a)(2)(B), added subpar. (F).

Subsec. (d)(4)(E). Pub. L. 105-135, §603(a)(3), substituted "small business concerns, qualified HUBZone small business concerns, and" for "small business concerns and" after "opportunities for".

Subsec. (d)(4)(G). Pub. L. 105-135, §415, added subpar. (G).

Subsec. (d)(6). Pub. L. 105-135, §603(a)(4), inserted "qualified HUBZone small business concerns," after "small business concerns," wherever appearing.

Subsec. (d)(10)(B). Pub. L. 105-135, §603(a)(5), inserted "qualified HUBZone small business concerns," after "small business concerns,".

Subsec. (e)(1)(C). Pub. L. 105-135, §416(c), substituted "\$100,000" for "\$25,000" in two places.

Subsec. (g)(1). Pub. L. 105-85 added subpar. (A), redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpars. (A) and (B) which read as follows:

"(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 426a(a)(1) of title 41 or with full FACNET capability certified pursuant to section 426a(a)(2) of title 41;

"(B)(i) the proposed procurement is for an amount not greater than \$250,000 and is to be made through a system with full FACNET capability certified pursuant to section 426a(a)(2) of title 41; and

"(ii) a certification has been made pursuant to section 426a(b) title 41 that Government-wide FACNET capability has been implemented;".

Subsec. (k). Pub. L. 105-135, §416(a), added subsec. (k).

1996—Subsec. (d)(1). Pub. L. 104-106, §4321(c)(1)(A), substituted "that small business concerns," for "that small business concerns,,".

Subsec. (d)(6)(C). Pub. L. 104-106, §4321(c)(1)(B), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by the socially and economically disadvantaged individuals".

Subsec. (f)(5). Pub. L. 104-106, §4321(c)(2), inserted "and" at end.

1994—Subsec. (b)(1)(A). Pub. L. 103-403, §407, inserted "including information on the benefits and risks of franchising," after "small-business enterprises," in first sentence.

Pub. L. 103-403, §401(a)(1), repealed amendments made by Pub. L. 98-362, §5(a), effective Sept. 30, 2003. Amendment by Pub. L. 98-362, §5(a)(2), previously repealed effective Oct. 1, 1994, by section 7(b) of Pub. L. 98-362, as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Subsec. (b)(1)(G). Pub. L. 103-403, §415, substituted "this chapter and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988" for "this paragraph".

Subsec. (d)(1). Pub. L. 103-355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals" in two places.

Subsec. (d)(2)(A). Pub. L. 103-355, §4404(b), substituted "simplified acquisition threshold" for "small purchase threshold".

Subsec. (d)(3)(A). Pub. L. 103-355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals" in two places.

Subsec. (d)(3)(D), (E). Pub. L. 103-355, §7106(b)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: " 'Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.' "

Subsec. (d)(4)(D). Pub. L. 103-355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(4)(E). Pub. L. 103-355, §7106(b)(4), inserted "and for small business concerns owned and controlled by women" after "(3) of this subsection".

Subsec. (d)(6)(A). Pub. L. 103-355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(6)(C). Pub. L. 103-355, §7106(b)(1), which directed that subpar. (C) be amended by substituting ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals", could not be executed because the words "and small business concerns owned and controlled by socially and economically disadvantaged individuals" did not appear in subpar. (C).

Subsec. (d)(6)(F), (10)(B). Pub. L. 103-355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (e)(1). Pub. L. 103-355, §4202(d)(1)(A), substituted "\$25,000" for "the small purchase threshold" wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103-355, §4202(d)(1)(B), inserted "in the case of a contract or order estimated to be greater than the simplified acquisition threshold," after "(B)".

Subsec. (f)(6). Pub. L. 103-355, §4202(d)(2), added par. (6).

Subsec. (g)(1)(A) to (E). Pub. L. 103-355, §4202(d)(3)(A), (B), added subpars. (A) and (B) and redesignated former subpars. (A) to (C) as (C) to (E), respectively. Former subpars. (D) and (E) redesignated (F) and (G), respectively.

Subsec. (g)(1)(F). Pub. L. 103-355, §4202(d)(3)(A), redesignated subpar. (D) as (F). Former subpar. (F) redesignated (H).

Pub. L. 103-355, §1055(b)(2), added subpar. (F).

Subsec. (g)(1)(G), (H). Pub. L. 103-355, §4202(d)(3)(A), redesignated subpars. (E) and (F) as (G) and (H), respectively.

1992—Subsec. (a). Pub. L. 102-366, §232(a)(1)-(5), substituted semicolon for period at end of par. (1)(B), "; and" for period at end of par. (1)(C), "to subparagraph (A)" for "to (A)" in par. (6)(C)(i), "636(j)(10)(G)" for "636(j)(10)(H)" in par. (6)(C)(ii), and "to subparagraph (D)" for "to (D)" in par. (12)(E).

Subsec. (b)(1)(E) to (G). Pub. L. 102-564, §304, added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (c). Pub. L. 102-366, §232(a)(7), designated subsec. (c) as reserved. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102-366, §232(a)(6), (8), redesignated subsec. (c) as (d) and substituted "imposition" for "impositon" in par. (4)(F)(ii). Former subsec. (d) redesignated (e).

Subsec. (d)(11), (12). Pub. L. 102-564, §303(a), redesignated par. (12) as (11) and struck out former par. (11) which read as follows: "At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection."

Subsecs. (e) to (g). Pub. L. 102-366, §232(a)(6), redesignated subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102-366, §232(a)(6), (9), redesignated subsec. (g) as (h) and substituted "Administrative" for "Administration" in par. (2). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 102-366, §232(a)(6), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1991—Subsec. (c). Pub. L. 102-191 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to management and technical assistance for small businesses owned by women. See section 656 of this title.

Subsec. (d). Pub. L. 102-191 redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(12). Pub. L. 102-190 added par. (12).

Subsecs. (e) to (j). Pub. L. 102-191, which directed the redesignation of subsecs. (e) to (j) as (d) to (k), was executed by redesignating subsecs. (e) to (j) as (d) to (i), respectively, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101-574, §207(2), struck out after subpar. (C) "No contract may be entered into under subparagraph (B) after September 30, 1988."

Subsec. (a)(1)(B). Pub. L. 101-574, §207(1), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "to enter into contracts with such agency as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and".

Subsec. (a)(1)(C). Pub. L. 101-574, §207(4), added subpar. (C). Former subpar. (C) redesignated (B).

Subsec. (a)(4)(A)(i)(II), (ii)(II). Pub. L. 101-574, §204(b), inserted "(or a wholly owned business entity of such tribe)" after "tribe".

Subsec. (a)(17)(B)(iv). Pub. L. 101-574, §210, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market."

Subsec. (d)(2)(A). Pub. L. 101-510, §806(e)(2)(A), substituted "the small purchase threshold" for "\$10,000".

Subsec. (e)(1)(A). Pub. L. 101-510, §806(e)(2)(B), inserted "or" at end of subcl. (i), substituted a comma for "; or" at end of subcl. (ii), substituted "the small purchase threshold" for "\$25,000" in subcls. (i) and (ii), and struck out subcl. (iii) which read as follows: "solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors,".

Subsec. (e)(1)(B), (C). Pub. L. 101-510, §806(e)(2)(B)(i), substituted "the small purchase threshold" for "\$25,000" wherever appearing.

Subsec. (g)(1). Pub. L. 101-574, §244, substituted "subsection (e)(1)" for "subsection (a)(1)".

1989—Subsec. (a)(1)(D)(i). Pub. L. 101-37, §10(c), substituted "Program Participants" for "program participants".

Subsec. (a)(4)(A)(i). Pub. L. 101-37, §6(d)(1), inserted "unconditionally" after "per centum".

Subsec. (a)(4)(A)(ii). Pub. L. 101-37, §6(d)(2), inserted "unconditionally" after "which is".

Subsec. (a)(6)(C). Pub. L. 101-37, §7(b), which directed substitution of "636(j)(10)(G)" for "636(j)(10)(H)" in cl. (iii), could not be executed because there was no cl. (iii). See 1992 Amendment note above.

Subsec. (a)(9). Pub. L. 101-37, §17, substituted "Administration" for "Administrator" in subpar. (A), "section 636(j)(10)(G) of this title" for "section 636(j)(10)(H) of this title" in subpar. (B)(iii), and "Administration's" for "Administrator's" in subpar. (C).

Subsec. (a)(15). Pub. L. 101-37, §6(b), substituted "Organization" for "organizations".

Subsec. (a)(17)(B)(ii) to (iv). Pub. L. 101-37, §10(e), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (a)(18)(A). Pub. L. 101-37, §12, struck out "certified" before "during such person's term".

Subsec. (a)(19)(B). Pub. L. 101-37, §13, struck out ", imposed by the Administrator," after "disciplinary action".

Subsec. (a)(20)(A). Pub. L. 101-37, §14, substituted "Business Opportunity Specialist" for "business opportunity specialist".

Subsec. (a)(21). Pub. L. 101-37, §16, in subpar. (B) struck out discretionary authority of the Administrator and preconditions respecting request prior to relinquishment of ownership or control in introductory provisions, added subpar. (C), and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(1)(A). Pub. L. 101-162 amended last sentence generally, substituting "the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official" for "that the Administration is given primary recognition in all cosponsored printed materials, whether the participant is a profit-making concern or a governmental agency or official".

1988—Subsec. (a)(1)(A). Pub. L. 100-656, §303(d), inserted provisions authorizing Administration appeal from procurement officer's adverse decisions and providing for decision by the Secretary or agency head on the appeal.

Subsec. (a)(1)(D). Pub. L. 100-656, §303(b), added subpar. (D).

Subsec. (a)(3). Pub. L. 100-656, §303(e), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract."

Subsec. (a)(4). Pub. L. 100-656, §207(c), amended par. (4) generally, in subpar. (A)(i) adding subcl. (III), in subpar. (A)(ii) adding subcl. (III), and in subpar. (B) adding cl. (iii).

Subsec. (a)(4)(C). Pub. L. 100-656, §209(b), added subpar. (C).

Subsec. (a)(6). Pub. L. 100-656, §209(a), designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (a)(7). Pub. L. 100-656, §303(g), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(9). Pub. L. 100-656, §409, amended par. (9) generally. Prior to amendment, par. (9) read as follows: "Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5."

Subsec. (a)(10). Pub. L. 100-656, §201(b), inserted sentence at end requiring such program to make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment.

Subsec. (a)(12). Pub. L. 100-656, §501, amended par. (12) generally. Prior to amendment, par. (12) read as follows: "To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program."

Subsec. (a)(15). Pub. L. 100-656, §207(a), added par. (15).

Subsec. (a)(16). Pub. L. 100-656, §303(c), added par. (16).

Subsec. (a)(17). Pub. L. 100-656, §303(h), added par. (17).

Subsec. (a)(18). Pub. L. 100-656, §402, added par. (18).

Subsec. (a)(19). Pub. L. 100-656, §403, added par. (19).

Subsec. (a)(20). Pub. L. 100-656, §404, added par. (20).

Subsec. (a)(21). Pub. L. 100-656, §407, added par. (21).

Subsec. (b)(1)(A). Pub. L. 100-590, §131(b), inserted "that any Administration program participating in such cosponsored activities receives appropriate recognition and publicity, and" in provisions preceding cl. (i), inserted ", executed on behalf of the agency by an employee of the agency in Washington, District of Columbia, and who shall also approve, in advance, any printed materials to be distributed at the conference," in cl. (1), and inserted provisions at end which authorized Administration, in case of cosponsored activities, to ensure that cooperation does not constitute endorsement or give undue recognition to public official or agency, and that Administration is given primary recognition in all cosponsored printed materials.

Subsec. (b)(16). Pub. L. 100-533, §202, and Pub. L. 100-590, §127(b), made identical amendments adding par. (16).

Subsec. (c). Pub. L. 100-590, §127(a), amended subsec. (c) generally, inserting provisions substantially identical to provisions contained in prior general amendment by Pub. L. 100-533, §201.

Pub. L. 100-533, §201, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business."

Subsec. (d)(4)(F). Pub. L. 100-656, §304(a), added subpar. (F).

1987—Subsec. (a)(14)(B), (C). Pub. L. 100-26, §10(b)(3), substituted "section 644(o)" for "section 644(n)".

1986—Subsec. (a)(1). Pub. L. 99-567, §2, substituted provision that no contract may be entered into under subpar. (B) after Sept. 30, 1988, for provision that no such contract could be entered into prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(1)(A). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(b)(2)], Pub. L. 99-661, §921(b)(2), amended subpar. (A) identically, inserting provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (a)(1)(B). Pub. L. 99-567, §1(a), struck out "(other than the Department of Defense or any component thereof)" after "contracts with such agency".

Subsec. (a)(2). Pub. L. 99-567, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised after Sept. 30, 1988, for provision that such authority could not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(4). Pub. L. 99-272, §18015(b), in amending par. (4) generally, included economically disadvantaged Indian tribe within definition of "socially and economically disadvantaged small business concern".

Subsec. (a)(6). Pub. L. 99-272, §18015(c), inserted provision enumerating factors to be considered by the Administration in determining the economic disadvantage of an Indian tribe.

Subsec. (a)(13). Pub. L. 99-272, §18015(d), added par. (13).

Subsec. (a)(14). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(c)(1)], Pub. L. 99-661, §921(c)(1), amended subsec. (a) identically, adding par. (14).

Subsec. (e)(1). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(a)], Pub. L. 99-661, §921(a), amended par. (1) identically, in subpar. (A) substituting "\$25,000" for "\$10,000" in cls. (i) and (ii), adding cl. (iii), and in provision following cl. (iii) substituting "subsection (f)" for "subsection (b)", adding subpar. (B), and redesignating former subpar. (B) as (C).

Subsec. (f). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§922(d)], Pub. L. 99-661, §922(d), amended subsec. (f) identically, substituting "subparagraph (A) or (B) of subsection (e)(1)" for "subsection (e)(1)(A)" in provisions preceding par. (1).

1984—Subsec. (b)(1)(A). Pub. L. 98-362, §5(a)(2), which inserted provisions at end of subpar. (A) relating to providing of assistance through cooperation of cosponsors, and provisions respecting activities of the Administration related to furnishing of assistance by cosponsors, was repealed effective Oct. 1, 1994, by Pub. L. 98-362, §7(b), as amended, and effective Sept. 30, 2003, by Pub. L. 103-403, §401(a), as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Pub. L. 98-362, §5(a)(1), which inserted "computer security," after "wage incentives," was repealed effective Sept. 30, 2003, by Pub. L. 103-403, §401(a), as amended. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(7)(C). Pub. L. 98-577, §401, inserted "Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed."

Subsec. (d)(1). Pub. L. 98-577, §402(a), inserted ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(3)(A). Pub. L. 98-577, §402(b), inserted ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsecs. (e) to (j). Pub. L. 98-577, §404(a), added subsecs. (e) to (j) and struck out former subsec. (e) which related to notice and publication of procurement actions, exceptions, departmental procedures, contents of notice, sole source contracts and unsolicited proposals.

1983—Subsec. (a)(1). Pub. L. 98-47, §2, substituted provision that no contract may be entered into under subpar. (B) prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that such contracts may not be entered into after Sept. 30, 1981.

Subsec. (a)(1)(B). Pub. L. 98-47, §1(a), substituted "(other than the Department of Defense or any component thereof) as shall be designated by the President" for ", as shall be designated by the President within 60 days after the effective date of this paragraph".

Subsec. (a)(2). Pub. L. 98-47, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that par. (2) shall not apply after Sept. 30, 1981.

Subsec. (e). Pub. L. 98-72 amended subsec. (e) generally, designating existing provisions as par. (1) and in par. (1) as so designated substituting: "It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable" for "It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of \$10,000 and above, and all civilian procurement actions of \$5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or

professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable", and adding pars. (2) to (6).

1980—Subsec. (a)(1), (2). Pub. L. 96-481, §101, substituted "September 30, 1981" for "September 30, 1980".

Subsec. (a)(8). Pub. L. 96-481, §105, substituted provisions that all determinations may pursuant to par. (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development and that all other determinations made pursuant to (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to the Administrator, for provision that all determinations made pursuant to pars. (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (d)(3)(C). Pub. L. 96-302 included in the presumption of being disadvantaged individuals Asian Pacific Americans.

1978—Subsec. (a). Pub. L. 95-507, §202(a), redesignated pars. (1) and (2) as (1)(A) and (C) and as redesignated inserted provision giving the Administration sole discretion in choosing procurement requirements from agencies or departments for use in the program, provided that the terms and conditions of the proposed contract are to be negotiated, made provision for the submission of stalemated matters for resolution, and added pars. (1)(B) and (2) to (12).

Subsec. (b)(1). Pub. L. 95-510 substituted in subpar. (B) provisions relating to the establishment and implementation of volunteer programs for provisions relating to the use of office facilities etc., and the payment of transportation expenses and per diem allowances and added subpars. (C) to (F).

Subsec. (d). Pub. L. 95-507, §211, substituted provisions relating to the performance of contracts by small business concerns, requiring, among other things, the inclusion of a specific contract clause in most Federal prime contracts, requiring as a condition of the solicitation of any offer of a Federal contract in excess of \$500,000, the submission of a summary contract plan, and relating to incentives for small business subcontracting, contract eligibility, breach of contract or subcontract, administrative review of contract solicitation and subcontract planning, and relating to submission to congressional committees of a report on subcontracting plans for provisions relating generally to the small business subcontract program and regulations issued thereunder.

1977—Subsec. (b)(7). Pub. L. 95-89, in revising par. (7), incorporated existing introductory text in provisions designated subpar. (A) and substituted "with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract" for "with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract"; added subpar. (B); and incorporated existing end text in provisions designated subpar. (C), substituting therein "certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract" for "certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract" and "shall let" and "other requirement of responsibility or eligibility" for "are authorized to let" and "other requirement with respect to capacity and credit".

1970—Subsec. (b)(15). Pub. L. 91-375 substituted "section 3204 of title 39" for "section 4154 of title 39".

1967—Subsec. (b)(1)(B). Pub. L. 90-104, §105, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(13). Pub. L. 90-104, §106, substituted "advisory boards and committees" for "small business advisory boards and committees truly representative of small business", included achievement of purposes of the Small Business Investment Act of 1958, and required the Administrator to call board and committee meetings, pay transportation expenses and per diem allowances, and rent temporarily necessary accommodations to facilitate conduct of meetings.

Subsec. (b)(15). Pub. L. 90-104, §107, added par. (15).

1966—Subsec. (b)(1). Pub. L. 89-754 designated existing provisions as subpar. (A) and added subpar. (B).

1964—Subsec. (b)(14). Pub. L. 88-560 added par. (14).

1961—Subsec. (d). Pub. L. 87-305, §7, added subsec. (d).

Subsec. (e). Pub. L. 87-305, §8, added subsec. (e).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 1701(a)(4)(C) of Pub. L. 115–91 effective Jan. 1, 2020, see section 1701(j) of Pub. L. 115–91, set out as a note under section 657a of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by section 1832(c) of Pub. L. 114–328 effective on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue implementing regulations [regulations effective Oct. 1, 2018], see section 1832(e) of Pub. L. 114–328, set out as a note under section 632 of this title.

TERMINATION DATE OF 2004 AMENDMENT

Amendment by section 132(b) of Pub. L. 108–447 repealed Oct. 1, 2006, see section 132(c) of Pub. L. 108–447, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VIII, §810(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210, provided that: "The amendments made by this section [amending this section and sections 416 and 426 of Title 41, Public Contracts] shall take effect on October 1, 2000. The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of Title 41] shall apply with respect to solicitations issued on or after that date."

EFFECTIVE DATE OF 1997 AMENDMENTS

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

Pub. L. 105–85, div. A, title VIII, §850(g), Nov. 18, 1997, 111 Stat. 1850, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, former sections 2302c and 2304 of Title 10, Armed Forces, section 1501 of former Title 40, Public Buildings, Property, and Works, and sections 252c, 253, 416, 426, and 427 of Title 41, Public Contracts, repealing section 426a of Title 41, amending provisions set out as a note under section 413 of Title 41, and repealing provisions set out as a note under section 426a of Title 41] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

"(2) The repeal made by subsection (c) of this section [repealing provisions set out as a note under section 426a of Title 41] shall take effect on the date of the enactment of this Act."

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2220 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 8752 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 207(a), (c) and 303(d), (e) of Pub. L. 100–656 effective Nov. 15, 1988, see section 803(a) of Pub. L. 100–656, set out as a note under section 631 of this title.

Amendment by sections 201(b), 303(c), (g), (h), 304(a), 402–404, and 409 of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(A)–(C) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by section 407 of Pub. L. 100–656 effective with respect to contracts entered into on or after June 1, 1989, see section 803(b)(3) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by sections 209 and 303(b) of Pub. L. 100–656 effective Oct. 1, 1989, see section 803(b)(4)(A), (B) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10(b)(3) of Pub. L. 100–26 applicable as if included in each instance of the Defense

Acquisition Improvement Act (as specified in section 2 of Pub. L. 100–26) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100–26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, §921(b)(2), (c)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(b)(2), (c)(1) of Pub. L. 99–661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g) of Pub. L. 99–661, set out as a note under section 632 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Pub. L. 103–403, title IV, §401(a), Oct. 22, 1994, 108 Stat. 4190, as amended by Pub. L. 105–135, title V, §504, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106–554, §1(a)(9) [title V, §504(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–696, provided that:

"(1) REPEAL.—The amendments made by section 5(a) of Small Business Computer Security and Education Act of 1984 [Pub. L. 98–362, amending this section] (15 U.S.C. 633 note) are hereby repealed.

"(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on September 30, 2003."

[Repeal by section 401(a) of Pub. L. 103–403, set out as a note above, effective Sept. 30, 1997, was not executed to reflect the probable intent of Congress and subsequent amendment by Pub. L. 105–135, changing the effective date to Sept. 30, 2000. Similarly, repeal effective Sept. 30, 2000, was not executed because of subsequent amendment by Pub. L. 106–554, changing the effective date to Sept. 30, 2003.]

Amendment by section 5(a)(1), (2) of Pub. L. 98–362 effective Oct. 1, 1984, and amendment by section 5(a)(2) of Pub. L. 98–362 repealed Oct. 1, 1994, see section 7 of Pub. L. 98–362, as amended, set out as a note under section 633 of this title.

Pub. L. 98–577, title IV, §404(b), Oct. 30, 1984, 98 Stat. 3084, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to any solicitation for bids or proposals issued after March 31, 1985."

EFFECTIVE DATE OF 1983 AMENDMENTS

Pub. L. 98–72, §1(b)(1), (2), Aug. 11, 1983, 97 Stat. 403, provided that:

"(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act [subsec. (e)(4) of this section], the amendments made by this Act [amending this section] shall apply to procurement actions initiated ninety days after the date of enactment of this Act [Aug. 11, 1983].

"(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983."

Pub. L. 98–47, §1(b), July 13, 1983, 97 Stat. 243, provided that: "The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [July 13, 1983]."

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–375, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

REGULATIONS

Pub. L. 118–31, div. A, title VIII, §862(b), Dec. 22, 2023, 137 Stat. 347, provided that: "Not later than 180 days after the date of the enactment of this Act [Dec. 22, 2023], the Administrator shall submit to the Federal Acquisition Regulatory Council proposed revisions to regulations that the Administrator determines necessary to carry out the amendments made by this section [amending this section]."

Pub. L. 116–283, div. A, title VIII, §868(c), Jan. 1, 2021, 134 Stat. 3787, provided that: "Not later than 120 days after the date of the enactment of this Act [Jan. 1, 2021], the Administrator of the Small Business Administration shall issue rules to carry out this section [amending this section and section 644 of this title]

and the amendments made by this section."

Pub. L. 108-447, div. K, title I, §141(b), Dec. 8, 2004, 118 Stat. 3454, provided that: "The Administration shall, not later than 180 days after the date of enactment of this Act [Dec. 8, 2004], promulgate regulations to carry out the amendments made by subsection (a) [amending this section]."

Pub. L. 106-50, §303(c), Aug. 17, 1999, 113 Stat. 243, provided that: "Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as a note under this section] and the amendment made by this section."

TRANSFER OF FUNCTIONS

Transfer to Director of ACTION [now Corporation for National and Community Service] of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of purposes of this section, except that such individuals or groups of persons, in providing technical and managerial aids to small concerns, remain subject to direction of Small Business Administration. See section 601 of Pub. L. 93-113, 87 Stat. 416, formerly set out as a note under section 5041 of Title 42, The Public Health and Welfare, which superseded section 2(a)(3) of Reorg. Plan No. 1 of 1971, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in the Appendix to Title 5, Government Organization and Employees.

EXTENSION OF PARTICIPATION IN 8(A) PROGRAM

Pub. L. 116-283, div. A, title VIII, §869, Jan. 1, 2021, 134 Stat. 3787, provided that:

"(a) IN GENERAL.—The Administrator of the Small Business Administration shall ensure that a small business concern participating in the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) on or before September 9, 2020, may elect to extend such participation by a period of 1 year, regardless of whether such concern previously elected to suspend participation in such program pursuant to guidance of the Administrator.

"(b) EMERGENCY RULEMAKING AUTHORITY.—Not later than 15 days after the date of enactment of this section [Jan. 1, 2021], the Administrator shall issue regulations to carry out this section without regard to the notice requirements under section 553(b) of title 5, United States Code."

Pub. L. 116-260, div. N, title III, §330, Dec. 27, 2020, 134 Stat. 2043, provided that:

"(a) IN GENERAL.—The Administrator shall ensure that a small business concern participating in the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) on or before September 9, 2020, may elect to extend such participation by a period of 1 year, regardless of whether the small business concern previously elected to suspend participation in the program pursuant to guidance of the Administrator.

"(b) EMERGENCY RULEMAKING AUTHORITY.—Not later than 15 days after the date of enactment of this Act [Dec. 27, 2020], the Administrator shall issue regulations to carry out this section without regard to the notice requirements under section 553(b) of title 5, United States Code."

[For definitions of "Administrator" and "small business concern" as used in section 330 of div. N of Pub. L. 116-260, set out above, see section 302 of div. N of Pub. L. 116-260, set out as a note under section 9001 of this title.]

GOOD FAITH COMPLIANCE WITH SUBCONTRACTING REQUIREMENTS

Pub. L. 114-328, div. A, title XVIII, §1821(c), Dec. 23, 2016, 130 Stat. 2654, provided that: "Not later than 270 days after the date of enactment of this title [Dec. 23, 2016], the Administrator of the Small Business Administration shall provide examples of activities that would be considered a failure to make a good faith effort to comply with the requirements imposed on an entity (other than a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632)) that is awarded a prime contract containing the clauses required under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d))."

SUBCONTRACTING MISREPRESENTATIONS

Pub. L. 111-240, title I, §1321, Sept. 27, 2010, 124 Stat. 2540, provided that: "Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator, in consultation with the Administrator for Federal Procurement Policy, shall promulgate regulations relating to, and the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall amend the Federal Acquisition Regulation issued under section 25 of such Act [see 41 U.S.C. 1303(a)] to establish a policy on, subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities."

[For definitions of "Administrator" and "small business concern" as used in section 1321 of Pub. L.

111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

SMALL BUSINESS CONTRACTING PARITY

Pub. L. 111–240, title I, §1347(a), (b), Sept. 27, 2010, 124 Stat. 2546, 2547, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively; and

"(2) the terms 'HUBZone small business concern', 'small business concern', 'small business concern owned and controlled by service-disabled veterans', and 'small business concern owned and controlled by women' have the same meanings as in section 3 of the Small Business Act (15 U.S.C. 632).

"(b) CONTRACTING IMPROVEMENTS.—

"(1) CONTRACTING OPPORTUNITIES.—[Amended section 657a of this title.]

"(2) CONTRACTING GOALS.—[Amended section 644 of this title.]

"(3) MENTOR-PROTEGE PROGRAMS.—The Administrator may establish mentor-protege programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a))."

INCREASING NUMBER OF OUTREACH CENTERS

Pub. L. 110–186, title I, §105, Feb. 14, 2008, 122 Stat. 626, provided that:

"(a) IN GENERAL.—The Administrator [of the Small Business Administration] shall use the authority in section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) to ensure that the number of Veterans Business Outreach Centers throughout the United States increases—

"(1) subject to subsection (b), by at least 2, for each of fiscal years 2008 and 2009; and

"(2) by the number that the Administrator considers appropriate, based on need, for each fiscal year thereafter.

"(b) LIMITATION.—Subsection (a)(1) shall apply in a fiscal year if, for that fiscal year, the amount made available for the Office of Veterans Business Development is more than the amount made available for the Office of Veterans Business Development for fiscal year 2007."

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106–50, §303(b), Aug. 17, 1999, 113 Stat. 243, provided that: "For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendment made by this section [amending this section], including information regarding the appropriate local office at which affected small businesses may seek such assistance."

FEDERAL ACQUISITION REGULATION

Pub. L. 105–135, title IV, §416(b), Dec. 2, 1997, 111 Stat. 2620, provided that: "The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section [amending this section]."

IMPLEMENTATION OF AMENDMENT BY PUB. L. 105–85

Pub. L. 105–85, div. A, title VIII, §850(e)(3), Nov. 18, 1997, 111 Stat. 1849, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 416 of Title 41, Public Contracts] shall be implemented in a manner consistent with any applicable international agreements."

MOBILE RESOURCE CENTER PILOT PROGRAM

Pub. L. 103–403, title IV, §406, Oct. 22, 1994, 108 Stat. 4192, provided that the Administrator of the Small Business Administration could establish and carry out in each of fiscal years 1995, 1996, and 1997 a mobile resource pilot program and, if it was carried out, required the Administrator to transmit to Congress by Dec. 31, 1996, a report containing the results of such program, together with recommendations for appropriate legislative and administrative action.

PROJECTS FUNDED PURSUANT TO FORMER PROVISIONS

Pub. L. 102–191, §3, Dec. 5, 1991, 105 Stat. 1591, provided in part that: "Projects funded pursuant to the provisions of former subsection (c) [15 U.S.C. 637(c)] shall be deemed to be funded under and shall be treated as if funded under section 28 of the Small Business Act [15 U.S.C. 656], as added by section 2."

TWO-YEAR RULE FOR ELIGIBILITY IN MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Pub. L. 101-574, title II, §203, Nov. 15, 1990, 104 Stat. 2818, provided that:

"(a) IN GENERAL.—The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

"(b) WAIVER OF MINIMUM PERIOD OF OPERATION.—(1) The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant, who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act [15 U.S.C. 637(a)(7)(A)], shall be considered to have demonstrated reasonable prospects for success, if—

"(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

"(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

"(C) the prospective Program Participant has adequate capital to carry out its business plan;

"(D) the prospective Program Participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

"(E) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

"(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer."

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

For provisions that credit toward meeting a subcontracting goal specified in a Department of Defense contract in implementing subsec. (d) of this section may be given for work performed on Indian land or by certain Indian joint ventures, see section 3902 of Title 10, Armed Forces.

TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS

Pub. L. 101-574, title IV, §402, Nov. 15, 1990, 104 Stat. 2832, which suspended subsec. (d) of section 834 of Pub. L. 101-189, set out below, for the test program period specified in subsec. (e) of that section, was repealed by Pub. L. 113-291, div. A, title VIII, §821(c)(2), Dec. 19, 2014, 128 Stat. 3434.

Pub. L. 101-189, div. A, title VIII, §834, Nov. 29, 1989, 103 Stat. 1509, as amended by Pub. L. 102-484, div. A, title VIII, §805, Oct. 23, 1992, 106 Stat. 2447; Pub. L. 103-355, title VII, §7103, Oct. 13, 1994, 108 Stat. 3368; Pub. L. 104-106, div. A, title VIII, §811, Feb. 10, 1996, 110 Stat. 394; Pub. L. 105-85, div. A, title VIII, §822, Nov. 18, 1997, 111 Stat. 1840; Pub. L. 106-65, div. A, title VIII, §817, Oct. 5, 1999, 113 Stat. 712; Pub. L. 106-398, §1 [[div. A], title X, §1087(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293; Pub. L. 108-375, div. A, title VIII, §843, Oct. 28, 2004, 118 Stat. 2019; Pub. L. 111-383, div. A, title VIII, §863(i), Jan. 7, 2011, 124 Stat. 4295; Pub. L. 112-81, div. A, title VIII, §866, Dec. 31, 2011, 125 Stat. 1526; Pub. L. 112-239, div. A, title X, §1076(a)(16), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113-291, div. A, §821(a)-(c)(1), (d)-(f), Dec. 19, 2014, 128 Stat. 3433, 3434; Pub. L. 114-92, div. A, title VIII, §872, Nov. 25, 2015, 129 Stat. 939; Pub. L. 114-328, div. A, title VIII, §826, Dec. 23, 2016, 130 Stat. 2280; Pub. L. 115-91, div. A, title XVII, §1701(a)(4)(D), (j), Dec. 12, 2017, 131 Stat. 1796, 1803, provided that:

"(a) TEST PROGRAM.—(1) The Secretary of Defense shall establish a test program under which contracting activities in the military departments and the Defense Agencies are authorized to undertake one or more demonstration projects to determine whether the negotiation and administration of comprehensive subcontracting plans will reduce administrative burdens on contractors while enhancing opportunities

provided under Department of Defense contracts for covered small business concerns. In selecting the contracting activities to undertake demonstration projects, the Secretary shall take such action as is necessary to ensure that a broad range of the supplies and services acquired by the Department of Defense are included in the test program.

"(2) In developing the test program, the Secretary of Defense shall—

"(A) consult with the Administrator of the Small Business Administration; and

"(B) provide an opportunity for public comment on the test program.

"(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—(1) In a demonstration project under the test program, the Secretary of a military department or head of a Defense Agency shall negotiate, monitor, and enforce compliance with a comprehensive subcontracting plan with a Department of Defense contractor described in paragraph (4).

"(2) The comprehensive subcontracting plan of a contractor—

"(A) shall apply to the entire business organization of the contractor or to one or more of the contractor's divisions or operating elements, as specified in the subcontracting plan; and

"(B) shall cover each Department of Defense contract that is entered into by the contractor and each subcontract that is entered into by the contractor as the subcontractor under a Department of Defense contract.

"(3) Each comprehensive subcontracting plan of a contractor shall require that the contractor report to the Secretary of Defense on a semi-annual basis the following information:

"(A) The amount of first-tier subcontract dollars awarded during the six-month period covered by the report to covered small business concerns, with the information set forth separately—

"(i) by North American Industrial Classification System code;

"(ii) by major defense acquisition program, as defined in section 2430(a) of title 10, United States Code [now 10 U.S.C. 4201];

"(iii) by contract, if the contract is for the maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment and the total value of the contract, including options, exceeds \$100,000,000; and

"(iv) by military department.

"(B) The total number of subcontracts active under the test program during the six-month period covered by the report that would have otherwise required a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

"(C) Costs incurred in negotiating, complying with, and reporting on comprehensive subcontracting plans.

"(D) Costs avoided by adoption of a comprehensive subcontracting plan.

"(4) A Department of Defense contractor referred to in paragraph (1) is, with respect to a comprehensive subcontracting plan negotiated in any fiscal year, a business concern that, during the immediately preceding fiscal year, furnished the Department of Defense with supplies or services (including professional services, research and development services, and construction services) pursuant to at least three Department of Defense contracts having an aggregate value of at least \$100,000,000.

"(c) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or submit a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) with respect to a Department of Defense contract if—

"(1) the contractor has negotiated a comprehensive subcontracting plan under the test program that includes the matters specified in section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6));

"(2) such matters have been determined acceptable by the Secretary of the military department or head of a Defense Agency negotiating such comprehensive subcontracting plan; and

"(3) the comprehensive subcontracting plan applies to the contract.

"(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A COMPREHENSIVE SUBCONTRACTING PLAN.—(1) A contractor that has negotiated a comprehensive subcontracting plan under the test program shall be subject to section 8(d)(4)(F) of the Small Business Act (15 U.S.C. 637(d)(4)(F)) regarding the assessment of liquidated damages for failure to make a good faith effort to comply with its comprehensive subcontracting plan and the goals specified in that plan. In addition, any such failure shall be a factor considered as part of the evaluation of past performance of an offeror.

"(2) Effective in fiscal year 2016 and each fiscal year thereafter in which the test program is in effect, the Secretary of Defense shall report to Congress on any negotiated comprehensive subcontracting plan that the Secretary determines did not meet the subcontracting goals negotiated in the plan for the prior fiscal year.

"(e) TEST PROGRAM PERIOD.—The test program authorized by subsection (a) shall begin on October 1,

1990, unless Congress adopts a resolution disapproving the test program. The test program shall terminate on December 31, 2027.

"(f) REPORT.—Not later than September 30, 2015, the Comptroller General of the United States shall submit a report on the results of the test program to the Committees on Armed Services and on Small Business of the House of Representatives and the Committees on Armed Services and on Small Business and Entrepreneurship of the Senate.

"(g) DEFINITIONS.—In this section, the term 'covered small business concern' includes each of the following:

"(1) A small business concern, as that term is defined under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

"(2) A small business concern owned and controlled by veterans, as that term is defined in section 3(q)(3) of such Act (15 U.S.C. 632(q)(3)).

"(3) A small business concern owned and controlled by service-disabled veterans, as that term is defined in section 3(q)(2) of such Act (15 U.S.C. 632(q)(2)).

"(4) A qualified HUBZone small business concern, as that term is defined under section 31(b) of such Act [15 U.S.C. 657a(b)].

"(5) A small business concern owned and controlled by socially and economically disadvantaged individuals, as that term is defined in section 8(d)(3)(C) of such Act (15 U.S.C. 637(d)(3)(C)).

"(6) A small business concern owned and controlled by women, as that term is defined under section 3(n) of such Act (15 U.S.C. 632(n))."

CONTRACT OPTIONS AND MODIFICATIONS

Pub. L. 100–656, title III, §303(f), Nov. 15, 1988, 102 Stat. 3871, as amended by Pub. L. 101–37, §10(d), June 15, 1989, 103 Stat. 73, provided that:

"(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval.

"(2) Within sixty days after the date of enactment of this Act [Nov. 15, 1988], the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in active contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

"(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

"(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection.

"(5) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a))."

LIQUIDATED DAMAGES CLAUSES

Pub. L. 100–656, title III, §304(b), Nov. 15, 1988, 102 Stat. 3873, provided that: "The contract clause required by section 8(d)(4)(F) of the Small Business Act [15 U.S.C. 637(d)(4)(F)] (as added by subsection (a)) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707]."

[Section 304(b) of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(B) of Pub. L. 100–656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

NATIVE AMERICAN ORGANIZATIONS EXEMPTIONS

Pub. L. 109–289, div. A, title VIII, §8018, Sept. 29, 2006, 120 Stat. 1277, provided in part: "That, during the current fiscal year and hereafter, businesses certified as 8(a) by the Small Business Administration pursuant to section 8(a)(15) of Public Law 85–536 [15 U.S.C. 637(a)(15)], as amended, shall have the same status as other program participants under section 602 of Public Law 100–656, 102 Stat. 3825 (Business Opportunity Development Reform Act of 1988) [set out as a note below] for purposes of contracting with agencies of the Department of Defense."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 109–148, div. A, title VIII, §8020, Dec. 30, 2005, 119 Stat. 2702.

Pub. L. 108–287, title VIII, §8021, Aug. 5, 2004, 118 Stat. 975.

Pub. L. 108–87, title VIII, §8021, Sept. 30, 2003, 117 Stat. 1076.

Pub. L. 100–656, title VI, §602, Nov. 15, 1988, 102 Stat. 3887, as amended by Pub. L. 101–37, §22, June 15, 1989, 103 Stat. 75; Pub. L. 101–515, title V, §2, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101–574, title II, §205, Nov. 15, 1990, 104 Stat. 2819; Pub. L. 103–403, title VI, §608, Oct. 22, 1994, 108 Stat. 4204, provided that:

"(a) **COMPETITIVE THRESHOLDS.**—Section 8(a)(1)(D) of the Small Business Act [15 U.S.C. 637(a)(1)(D)], as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)).

"(b) **JOINT VENTURES.**—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

"(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)); and

"(2) such Program Participant:

"(A) owns 51 per centum or more of such joint venture;

"(B) is located on the reservation or former reservation of such tribe as determined by the Secretary of the Interior of such tribe;

"(C) performs most of its activities on such reservation, or such former reservation; and

"(D) employs members of such tribe for at least 50 per centum of its total workforce.

"(c) **LIMITATIONS.**—A Program Participant, as a party to a joint venture shall receive no more than 5 contracts due solely to the provisions of subsection (b).

"(d) **SUNSET.**—Subsection (b) shall cease to be effective after September 30, 1997."

[Section 602 of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(D) of Pub. L. 100–656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

GAO EVALUATION OF SERVICE CORPS OF RETIRED EXECUTIVES; REPORT

Pub. L. 100–590, title I, §107, Nov. 3, 1988, 102 Stat. 2993, directed Comptroller General, not later than Dec. 1, 1989, to transmit a report to Small Business Committees of Senate and House of Representatives on functions being performed by volunteers in Service Corps of Retired Executives and Active Corps of Executives, including his evaluation of programs and including conclusions and recommendations concerning efficiency and cost effectiveness of such volunteers.

AUTHORIZATION OF APPROPRIATIONS FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Pub. L. 100–590, title I, §127(c), Nov. 3, 1988, 102 Stat. 3003, provided that: "There is authorized to be appropriated \$10,000,000 to carry out the demonstration projects required pursuant to subsection (a) [amending this section]. The initial projects authorized to be financed by this section [amending this section and enacting provisions set out as notes under this section] shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this subsection, except that it shall insure that all eligible sources are provided a reasonable opportunity to submit proposals."

Similar provisions were contained in Pub. L. 100–533, title II, §203, Oct. 25, 1988, 102 Stat. 2692.

SPENDING AUTHORITY FOR CONTRACTS AUTHORIZED FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Pub. L. 100–590, title I, §127(e), Nov. 3, 1988, 102 Stat. 3003, provided that: "New spending authority or authority to enter into contracts as authorized in this section [amending this section and enacting provisions set out as notes under this section] shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts."

RURAL AREA BUSINESS DEVELOPMENT PLANS

Pub. L. 100–590, title I, §129, Nov. 3, 1988, 102 Stat. 3004, provided that: "Within six months of the effective date of this Act [see Effective Date of 1988 Amendment note set out under section 631 of this title], the Administrator shall identify each Federal agency having substantial procurement or grantmaking authority and shall notify each agency so identified. Within six months of notification, each agency shall develop rural

area business enterprise development plans. Such plans shall establish rural area enterprise development objectives for the agency and methods for encouraging prime contractors, subcontractors and grant recipients to use small business concerns located in rural areas as subcontractors, suppliers, and otherwise. Such plans shall, to the extent the agency deems appropriate and feasible, include incentive techniques as encouragement."

BACKGROUND CHECK POLICY; FINGERPRINTING

Pub. L. 100-590, title I, §132, Nov. 3, 1988, 102 Stat. 3005, provided that: "The Small Business Administration shall not require fingerprints to be obtained for background check purposes from any participant in any Administration program who is serving on a voluntary basis and without compensation unless the Administration has reasonable grounds to believe that the participant's record or background is such as to make the participant ineligible to participate in the relevant program."

TIME FOR DESIGNATION OF AGENCY

Pub. L. 99-567, §1(b), Oct. 27, 1986, 100 Stat. 3188, provided that: "The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [Oct. 27, 1986]."

REPORT TO CONGRESS RESPECTING ASSISTANCE FURNISHED BY PROFITMAKING CONCERNS TO SMALL BUSINESS CONCERNS; CONTENTS

Pub. L. 98-362, §5(b), July 16, 1984, 98 Stat. 434, directed Small Business Administration, not later than Dec. 1, 1987, to report to Committees on Small Business of Senate and House of Representatives on impact of assistance provided in cooperation with profitmaking concerns pursuant to amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984 [amending this section], including information on benefits provided to small business concerns assisted by Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns.

TENNESSEE VALLEY AUTHORITY; PROCUREMENT PROCEDURES UNDER 1983 AND 1984 AMENDMENTS APPLICABLE ONLY TO PROCUREMENTS PAID FROM APPROPRIATED FUNDS

Pub. L. 98-577, title IV, §404(c), Oct. 30, 1984, 98 Stat. 3084, provided that: "The provisions of the amendment made by subsection (a) of this section [enacting subsecs. (e) to (j) of this section and striking out former subsec. (e) of this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

Pub. L. 98-72, §1(b)(3), Aug. 11, 1983, 97 Stat. 405, provided that: "The provisions of this Act [amending this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Pub. L. 96-302, title I, §118(c)(2), July 2, 1980, 94 Stat. 840, provided that the amendment of subsec. (d)(3)(C) by Pub. L. 96-302, including Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the amendment made by section 211 of Pub. L. 95-507, to subsec. (d) of this section.

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Concerns eligible to receive contracts pursuant to subsec. (a) of this section required to submit business plans required under section 636(j)(10)(A)(i) of this title within certain time limits, provided that no determination made under this paragraph shall be considered a denial of total participation for the purposes of subsec. (a)(9) of this section, see section 106(b) of Pub. L. 96-481 set out as a note under section 636 of this title.

REPORTS TO CONGRESS; GENERAL ACCOUNTING OFFICE REPORT ON BUSINESS DEVELOPMENT; QUARTERLY REPORTS BY SMALL BUSINESS ADMINISTRATION TO CONGRESSIONAL COMMITTEES

Pub. L. 95-507, title II, §202(b), Oct. 24, 1978, 92 Stat. 1763, as amended by Pub. L. 96-481, title I, §102, Oct. 21, 1980, 94 Stat. 2321, provided not later than Jan. 31, 1981, the General Accounting Office submit to Congress a report which, with respect to provisions of subsec. (a)(1)(B) and (2) of this section, evaluated the implementation of such provisions and whether such implementation furthered the purposes under section 631(e) of this title, and required the Small Business Administration and the agency designated pursuant to

subsec. (a)(1)(B) of this section to submit separate quarterly reports to specific congressional committees, which reports were to contain a review and evaluation of all activities conducted pursuant to subsec. (a)(1)(B) during the previous three-month period, with the first such report submitted commencing on Jan. 2, 1981, for the preceding three-month period, and to continue quarterly through, and include, the quarter ending Sept. 30, 1981.

TERMINATION OF ADVISORY BOARDS AND COMMITTEES

Advisory boards and committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board or committee established by the President or an officer of the Federal Government, such board or committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

DEFINITION

Pub. L. 100-590, title I, §127(d), Nov. 3, 1988, 102 Stat. 3003, provided that: "For the purposes of this section [amending this section and enacting provisions set out as notes under this section], the term 'small business concern owned and controlled by women' means any small business concern—

"(1) that is at least 51 per centum owned by one or more women; and

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

Similar provisions were contained in Pub. L. 100-533, title II, §204, Oct. 25, 1988, 102 Stat. 2692.

¹ *See References in Text note below.*

² *So in original. Probably should be "proscribed".*

³ *So in original. Probably should be "solicited".*

⁴ *So in original. Probably should be followed by "of the Small Business Act".*

⁵ *So in original. Probably should be "a".*

§637a. Repealed. Pub. L. 89-409, §3(b), May 2, 1966, 80 Stat. 133

Section, Pub. L. 87-550, §2, July 25, 1962, 76 Stat. 221, authorized the Administration to make loans to assist in adjusting to competition from imports, described such authority as additional to that under the Small Business Act, provided for application of the Trade Expansion Act of 1962, authorized appropriations, and provided for an effective date. See section 636(e) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on July 1, 1966, see section 3(c) of Pub. L. 89-409, set out as a note under section 636 of this title.

§637b. Availability of information

(a) Requests for information

For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business

concern must comply in performing such contract.

(b) Exempt contracts

Subsection (a) shall not apply to any contract or subcontract under such contract which—

- (1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or
- (2) is for services which are personal in nature.

(Pub. L. 95–507, title II, §223, Oct. 24, 1978, 92 Stat. 1772.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§637c. Definitions

For purposes of this Act—

- (1) the term "Administrator" means the Administrator of the Small Business Administration;
- (2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office; and
- (3) the term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

(Pub. L. 95–507, title II, §224(a), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 95–507, Oct. 24, 1978, 92 Stat. 1757. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2004—Par. (2). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

§637d. Subcontracting plan reports

(1) Reporting requirements

Not later than 1 year after January 2, 2013, the Administrator of the Small Business Administration shall take such actions as are necessary to ensure that the electronic subcontracting reporting system established by the Administration to carry out the requirement of section 637(d)(6)(E) of this title is modified to ensure that it can identify entities that fail to submit required reports.

(2) Annual report

Not later than March 31 of each year, the Administrator of the Small Business Administration shall provide the Committee on Small Business of the House of Representatives and the Committee

on Small Business and Entrepreneurship of the Senate a report, based on data available through existing systems, that sets forth, by agency (and to the extent practicable, by type of goal or plan), the following information:

(A) the percentage of entities required to submit reports pursuant to section 637(d)(6) of this title that filed such reports and that failed to file such reports during the prior fiscal year;

(B) the percentage of entities filing such reports that met, exceeded, or failed to meet goals set forth in their subcontracting plans during the prior fiscal year; and

(C) the aggregate value by which such entities exceeded, or failed to meet, their subcontracting goals during the prior fiscal year.

(Pub. L. 112–239, div. A, title XVI, §1653(b), Jan. 2, 2013, 126 Stat. 2082.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Small Business Act which comprises this chapter.

§638. Research and development

(a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

(b) Assistance to small-business concerns

It shall be the duty of the Administration, and it is empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;

(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section;

(4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs and small business technology transfer programs;

(5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;

(6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies;

(7) to report not less than annually to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including—

(A) the data on output and outcomes collected pursuant to subsections (g)(8) and (o)(9);

(B) the number of proposals received from, and the number and total amount of awards to,

HUBZone small business concerns and firms with venture capital, hedge fund, or private equity firm investment (including those majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms) under each of the SBIR and STTR programs;

(C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women or by socially or economically disadvantaged individuals under each of the SBIR and STTR programs;

(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (dd) for firms owned in majority part by venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program;

(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies;

(F) an accounting of funds, initiatives, and outcomes under the Commercialization Readiness Program;

(G) a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k);

(H) with respect to a Federal agency to which subsection (f)(1) or (n)(1) applies, whether the Federal agency has complied with the applicable subsection for the year covered by the report;

(I) the number of applications submitted to each Federal agency participating in the SBIR or STTR program in innovation open topics as compared to conventional topics, and how many small business concerns receive funding from open topics compared to conventional topics;

(J) the total number and dollar amount, and average size, of awards made by each Federal agency participating in the SBIR or STTR program, by phase, from—

(i) open topics; and

(ii) conventional topics;

(K) the minimum performance standards established under subsection (qq), including any applicable modifications under paragraph (3) of such subsection, and the number of small business concerns that did not meet those minimum performance standards, provided that the Administrator does not publish any personally identifiable information, the identity of each such small business concern, or any otherwise sensitive information; and

(L) the aggregate number and dollar amount of SBIR and STTR awards made pursuant to waivers under subsection (qq)(3)(E), provided that the Administrator does not publish any personally identifiable information, the identity of each such small business concern, or any otherwise sensitive information;

(8) to provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing);

(9) to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data; and

(10) to consult, where appropriate, with personnel from the relevant Federal agency to assist small business concerns participating in a SBIR or STTR program with commercializing research developed under such a program before such small business concern is awarded a contract from such Federal agency.

(c) Consultation and cooperation with Government agencies; studies and recommendations

The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

(d) Joint programs; approval of agreements; withdrawal of approval; publication in Federal

Register

(1) The Administrator is authorized to consult with representatives of small-business concerns with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

(A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;

(B) to undertake and utilize applied research;

(C) to collect research information related to a particular industry and disseminate it to participating members;

(D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;

(E) to prosecute applications for patents and render patent services for participating members; and

(F) to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

(e) Definitions

For the purpose of this section—

(1) the term "extramural budget" means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs, and except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries;

(2) the term "Federal agency" means an executive agency as defined in section 105 of title 5 or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);

(3) the term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

(4) the term "Small Business Innovation Research Program" or "SBIR" means a program under

which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process having—

(A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential, as described in subparagraph (B), submitted pursuant to SBIR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering, among other things, the proposal's commercial potential, as evidenced by—

(i) the small business concern's record of successfully commercializing SBIR or other research;

(ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of the commercial potential of the idea; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program—

(i) in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or

(ii) for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or merit-based selection procedures;

(5) the term "research" or "research and development" means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements;

(6) the term "Small Business Technology Transfer Program" or "STTR" means a program under which a portion of a Federal agency's extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having—

(A) a first phase, to determine, to the extent possible, the scientific, technical, and commercial merit and feasibility of ideas submitted pursuant to STTR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that meet particular program needs, in which awards shall be made based on the scientific, technical, and commercial merit and feasibility of the idea, as evidenced by the first phase and by other relevant information; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program—

(i) in which commercial applications of STTR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-STTR Federal funding awards; and

(ii) for which awards from non-STTR Federal funding sources are used for the continuation of research or research and development that has been competitively selected

using peer review or scientific review criteria;

(7) the term "cooperative research and development" means research or research and development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern, and not less than 30 percent of the work is performed by the research institution;

(8) the term "research institution" means a nonprofit institution, as defined in section 3703(5) ¹ of this title, and includes federally funded research and development centers, as identified by the National Scientific Foundation in accordance with the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41 (or any successor regulation thereto);

(9) the term "commercial applications" shall not be construed to exclude testing and evaluation of products, services, or technologies for use in technical or weapons systems, and further, awards for testing and evaluation of products, services, or technologies for use in technical or weapons systems may be made in either Phase II or Phase III of the Small Business Innovation Research Program and of the Small Business Technology Transfer Program, as defined in this subsection;

(10) the term "commercialization" means—

(A) the process of developing products, processes, technologies, or services; and

(B) the production and delivery (whether by the originating party or by others) of products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets;

(11) the term "Phase I" means—

(A) with respect to the SBIR program, the first phase described in paragraph (4)(A); and

(B) with respect to the STTR program, the first phase described in paragraph (6)(A);

(12) the term "Phase II" means—

(A) with respect to the SBIR program, the second phase described in paragraph (4)(B); and

(B) with respect to the STTR program, the second phase described in paragraph (6)(B);

(13) the term "Phase III" means—

(A) with respect to the SBIR program, the third phase described in paragraph (4)(C); and

(B) with respect to the STTR program, the third phase described in paragraph (6)(C);

(14) the term "senior procurement executive" means an official designated under section 1702(c) of title 41 as the senior procurement executive of a Federal agency participating in a SBIR or STTR program;

(15) the term "covered individual" means an individual who—

(A) contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a Federal research agency; and

(B) is designated as a covered individual by the Federal research agency concerned;

(16) the term "foreign affiliation" means a funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned entity, whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary);

(17) the term "foreign country of concern" means the People's Republic of China, the Democratic People's Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State;

(18) the term "malign foreign talent recruitment program" has the meaning given such term in section 19237 of title 42; and

(19) the term "federally funded award" means a Phase I, Phase II (including a Phase II award under subsection (cc)), or Phase III SBIR or STTR award made using a funding agreement.

(f) Federal agency expenditures for SBIR program

(1) Required expenditure amounts

Except as provided in paragraph (2)(B), each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns—

- (A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;
- (B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996;
- (C) not less than 2.5 percent of such budget in each of fiscal years 1997 through 2011;
- (D) not less than 2.6 percent of such budget in fiscal year 2012;
- (E) not less than 2.7 percent of such budget in fiscal year 2013;
- (F) not less than 2.8 percent of such budget in fiscal year 2014;
- (G) not less than 2.9 percent of such budget in fiscal year 2015;
- (H) not less than 3.0 percent of such budget in fiscal year 2016; and
- (I) not less than 3.2 percent of such budget in fiscal year 2017 and each fiscal year thereafter,

specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(2) Limitations

A Federal agency shall not—

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) Rule of construction

Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1).

(g) Administration of small business innovation research programs by Federal agencies required to establish such programs

Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this chapter and regulations issued hereunder—

- (1) unilaterally determine categories of projects to be in its SBIR program;
- (2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;
- (3) unilaterally determine research topics within the agency's SBIR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified by—
 - (A) the National Critical Technologies Panel (or its successor) in the 1991 report required under section 6683 ¹ of title 42, and in subsequent reports issued under that authority; or
 - (B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522 ¹ of title 10, and in subsequent reports issued under that authority;

- (4)(A) unilaterally receive and evaluate proposals resulting from SBIR proposals; and
- (B) make a final decision on each proposal submitted under the SBIR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension with respect to a solicitation, not later than 90 days after the date that would otherwise be applicable to the agency under clause (i);

(5) subject to subsection (l), unilaterally select awardees for its SBIR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own SBIR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements;

(8) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k), including—

(A) whether an awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the awardee has received as of the date of the award; and

(II) the amount of additional capital that the awardee has invested in the SBIR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator; ²

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; ²

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 1001 of title 20; or

(vi) is located in a State described in subsection (u)(3);

(B) a justification statement from the agency, if an awardee receives an award in an amount that is more than the award guidelines under this section; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(9) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(10) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, a section on its SBIR program, which section shall describe whether or not the Federal agency complied with the requirements of subsection (f) for the year covered by that plan and include a justification for failure to comply (if applicable),³ and shall submit such

section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives;

(11) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing);

(12) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR program of the Federal agency;

(13) require each small business concern submitting a proposal or application for a federally funded award to disclose in the proposal or application—

(A) the identity of all owners and covered individuals of the small business concern who are a party to any foreign talent recruitment program of any foreign country of concern, including the People's Republic of China;

(B) the existence of any joint venture or subsidiary of the small business concern that is based in, funded by, or has a foreign affiliation with any foreign country of concern, including the People's Republic of China;

(C) any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity;

(D) whether the small business concern is wholly owned in the People's Republic of China or another foreign country;

(E) the percentage, if any, of venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of concern, including the People's Republic of China;

(F) any technology licensing or intellectual property sales to a foreign country of concern, including the People's Republic of China, during the 5-year period preceding submission of the proposal; and

(G) any foreign business entity, offshore entity, or entity outside the United States related to the small business concern;

(14) after reviewing the disclosures of a small business concern under paragraph (13), and if determined appropriate by the head of such Federal agency, request such small business concern to provide true copies of any contractual or financial obligation or other agreement specific to a business arrangement, or joint-venture like arrangement with an enterprise owned by a foreign state or any foreign entity in effect during the 5-year period preceding submission of the proposal with respect to which such small business concern made such disclosures;

(15) not make an award under the SBIR program of the Federal agency to a small business concern if the head of the Federal agency determines that—

(A) the small business concern submitting the proposal or application—

(i) has an owner or covered individual that is party to a malign foreign talent recruitment program;

(ii) has a business entity, parent company, or subsidiary located in the People's Republic of China or another foreign country of concern; or

(iii) has an owner or covered individual that has a foreign affiliation with a research institution located in the People's Republic of China or another foreign country of concern; and

(B) the relationships and commitments described in clauses (i) through (iii) of subparagraph (A)—

(i) interfere with the capacity for activities supported by the Federal agency to be carried out;

(ii) create duplication with activities supported by the Federal agency;

(iii) present concerns about conflicts of interest;

(iv) were not appropriately disclosed to the Federal agency;

(v) violate Federal law or terms and conditions of the Federal agency; or

(vi) pose a risk to national security;

(16) require a small business concern receiving an award under its SBIR program to repay all amounts received from the Federal agency under the award if—

(A) the small business concern makes a material misstatement that the Federal agency determines poses a risk to national security; or

(B) there is a change in ownership, change to entity structure, or other substantial change in circumstances of the small business concern that the Federal agency determines poses a risk to national security; and

(17) require a small business concern receiving an award under its SBIR program to regularly report to the Federal agency and the Administration throughout the duration of the award on—

(A) any change to a disclosure required under subparagraphs (A) through (G) of paragraph (13);

(B) any material misstatement made under paragraph (16)(A); and

(C) any change described in paragraph (16)(B).

(h) Establishment of goals for funding agreements for research or research and development to small business concerns by agencies having budgets for research and development

In addition to the requirements of subsection (f), each Federal agency which has a budget for research or research and development in excess of \$20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

(i) Annual reporting

(1) In general

Each Federal agency required by this section to have an SBIR program or to establish goals shall report annually to the Small Business Administration the number of awards (including awards under subsection (y)) pursuant to grants, contracts, or cooperative agreements over \$10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

(2) Calculation of extramural budget

(A) Methodology

Not later than 4 months after the date of the enactment of each appropriations Act for a Federal agency required by this section to have an SBIR program, the Federal agency shall submit to the Administrator a report, which shall include a description of the methodology used for calculating the amount of the extramural budget of that Federal agency.

(B) Administrator's analysis

The Administrator shall include an analysis of the methodology received from each Federal agency referred to in subparagraph (A) in the report required by subsection (b)(7).

(j) Small Business Administration policy directives for the general conduct of small business innovation research programs

(1) Policy directives

The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the

Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of July 22, 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

(A) simplified, standardized, and timely SBIR solicitations;

(B) a simplified, standardized funding process which provides for (i) the timely receipt and review of proposals; (ii) outside peer review for at least Phase II proposals, if appropriate; (iii) protection of proprietary information provided in proposals; (iv) selection of awardees; (v) retention of rights in data generated in the performance of the contract by the small business concern; (vi) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency; (vii) cost sharing; and (viii) cost principles and payment schedules;

(C) exemptions from the regulations under paragraph (2) ⁴ if national security or intelligence functions clearly would be jeopardized;

(D) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program;

(E) simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(F) standardized and orderly withdrawal from program participation by an agency having a SBIR program; at the discretion of the Administration, such directives may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns; and

(G) the voluntary participation in a SBIR program by a Federal agency not required to establish such a program pursuant to subsection (f).

(2) Modifications

Not later than 90 days after October 28, 1992, the Administrator shall modify the policy directives issued pursuant to this subsection to provide for—

(A) retention by a small business concern of the rights to data generated by the concern in the performance of an SBIR award for a period of not less than 4 years;

(B) continued use by a small business concern participating in Phase III of the SBIR program, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of an SBIR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(C) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production;

(D) an increase to \$150,000 in the amount of funds which an agency may award in Phase I of an SBIR program, and to \$1,000,000 in Phase II of an SBIR program, and an adjustment of such amounts every year for inflation;

(E) a process for notifying the participating SBIR agencies and potential SBIR participants of the 1991, 1992, and the current critical technologies, as identified—

(i) by the National Critical Technologies Panel (or its successor), in accordance with section 6683 ¹ of title 42; or

(ii) by the Secretary of Defense, in accordance with section 2522 ¹ of title 10;

(F) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 637(a)(4) of this title, and the participation of small businesses that are 51 percent owned and controlled by women in technological innovation and in SBIR programs, including Phase III of such programs, and the collection of data to document such participation;

(G) technical and programmatic guidance to encourage agencies to develop gap-funding programs to address the delay between an award for Phase I of an SBIR program and the application for and extension of an award for Phase II of such program;

(H) procedures to ensure that a small business concern that submits a proposal for a funding agreement for Phase I of an SBIR program and that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years is able to demonstrate the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards; and

(I) procedures to ensure that agencies participating in the SBIR program retain the information submitted under subparagraph (H) at least until the Government Accountability Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

(3) Additional modifications

Not later than 120 days after December 21, 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

(A) to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III;

(B) to provide for the requirement of a succinct commercialization plan with each application for a Phase II award that is moving toward commercialization;

(C) to require agencies to report to the Administration, not less frequently than annually, all instances in which an agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—

(i) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) a description of the type of funding agreement under which the research, development, or production was obtained; and

(D) to implement subsection (v), including establishing standardized procedures for the provision of information pursuant to subsection (k)(3).

(4) Modifications relating to procurement center representatives

Upon the enactment of this paragraph, the Administrator shall modify the policy directives issued pursuant to this subsection to require procurement center representatives (as described in section 644(l) of this title) to consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in the SBIR program, particularly in Phase III.

(k) Database

(1) Public database

Not later than 180 days after December 21, 2000, the Administrator shall develop, maintain, and make available to the public a searchable, up-to-date, electronic database that includes—

(A) the name, size, location, and an identifying number assigned by the Administrator, of each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency;

(B) a description of each Phase I or Phase II SBIR or STTR award received by that small business concern, including—

(i) an abstract of the project funded by the award, excluding any proprietary information so identified by the small business concern;

(ii) the Federal agency making the award; and

(iii) the date and amount of the award;

(C) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made;

(D) information regarding mentors and Mentoring Networks, as required by section 657e(d) of this title;

(E) with respect to assistance under the STTR program only—

(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

(iii) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

(iv) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution; and

(F) for each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency, whether the small business concern—

(i) has venture capital, hedge fund, or private equity firm investment and, if so, whether the small business concern is registered as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms as required under subsection (dd)(3);

(ii) is owned by a woman or has a woman as a principal investigator; ²

(iii) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; ²

(iv) is owned by a faculty member or a student of an institution of higher education, as that term is defined in section 1001 of title 20; or

(v) received assistance under the Federal and State Technology Partnership Program (FAST Program).

(2) Government database

Not later than 90 days after December 31, 2011, the Administrator, in consultation with Federal agencies required to have an SBIR program pursuant to subsection (f)(1) or an STTR program pursuant to subsection (n)(1), shall develop and maintain a database to be used exclusively for SBIR and STTR program evaluation that—

(A) contains for each small business concern that applies for, submits a proposal for, or receives an award under Phase I or Phase II of the SBIR program or the STTR program—

(i) the name, size, and location of, and the identifying number assigned by the Administration to, the small business concern;

(ii) an abstract of the applicable project;

(iii) the specific aims of the project;

(iv) the number of employees of the small business concern;

(v) the names and titles of the key individuals that will carry out the project, the position each key individual holds in the small business concern, and contact information for each key individual;

(vi) the percentage of effort each individual described in clause (v) will contribute to the project;

(vii) whether the small business concern is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(viii) the Federal agency to which the application is made and contact information for the person or office within the Federal agency that is responsible for reviewing applications and making awards under the SBIR program or the STTR program;

(B) contains for each Phase II award made by a Federal agency—

(i) information collected in accordance with paragraph (3) on revenue from the sale of new products or services resulting from the research conducted under the award;

(ii) information collected in accordance with paragraph (3) on additional investment from any source, other than Phase I or Phase II SBIR or STTR awards, to further the research and development conducted under the award; and

(iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR and STTR program managers of Federal agencies, considers relevant and appropriate;

(C) includes any narrative information that a small business concern receiving a Phase II award voluntarily submits to further describe the outputs and outcomes of its awards;

(D) includes, for each awardee—

(i) the name, size, and location of, and any identifying number assigned by the Administrator to, the awardee;

(ii) whether the awardee has venture capital, hedge fund, or private equity firm investment and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment as of the date of the award;

(II) the percentage of ownership of the awardee held by a venture capital operating company, hedge fund, or private equity firm, including whether the awardee is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(III) the amount of additional capital that the awardee has invested in the SBIR or STTR technology, which information shall be collected on an annual basis;

(iii) the names and locations of any affiliates of the awardee;

(iv) the number of employees of the awardee;

(v) the number of employees of the affiliates of the awardee; and

(vi) the names of, and the percentage of ownership of the awardee held by—

(I) any individual who is not a citizen of the United States or a lawful permanent resident of the United States; or

(II) any person that is not an individual and is not organized under the laws of a State or the United States;

(E) includes any other data collected by or available to any Federal agency that such agency considers may be useful for SBIR or STTR program evaluation;

(F) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by the Administration, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database; and

(G) includes a timely and accurate list of any individual or small business concern that has participated in the SBIR program or STTR program that has been—

(i) convicted of a fraud-related crime involving funding received under the SBIR program or STTR program; or

(ii) found civilly liable for a fraud-related violation involving funding received under the SBIR program or STTR program.

(3) Updating information for database

(A) In general

A small business concern applying for a Phase II award under this section shall be required to update information in the database established under this subsection for any prior Phase II award received by that small business concern. In complying with this paragraph, a small

business concern may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(B) Annual updates upon termination

A small business concern receiving a Phase II award under this section shall—

- (i) update information in the database concerning that award at the termination of the award period; and
- (ii) be requested to voluntarily update such information annually thereafter for a period of 5 years.

(C) Government database

Not later than 60 days after the date established by a Federal agency for submitting applications or proposals for a Phase I or Phase II award under the SBIR program or STTR program, the head of the Federal agency shall submit to the Administrator the data required under paragraph (2) with respect to each small business concern that applies or submits a proposal for the Phase I or Phase II award.

(4) Protection of information

Information provided under paragraph (2) shall be considered privileged and confidential and not subject to disclosure pursuant to section 552 of title 5.

(5) Rule of construction

Inclusion of information in the database under this subsection shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35.

(l) Reporting of awards made from single proposal, to multiple award winners, or to critical technology topics

(1) Single proposal

If a Federal agency required to establish an SBIR program under subsection (f) makes an award with respect to an SBIR solicitation topic or subtopic for which the agency received only 1 proposal, the agency shall provide written justification for making the award in its next quarterly report to the Administration and in the agency's next annual report required under subsection (g)(8).

(2) Multiple awards

An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) an accounting of the awards the agency has made for Phase I of an SBIR program during the reporting period to entities that have received more than 15 awards for Phase II of an SBIR program during the preceding 5 fiscal years.

(3) Critical technology awards

An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8), an accounting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3), including an identification of the specific critical technologies topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such critical technology topics.

(m) Termination

The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2025.

(n) Required expenditures for STTR by Federal agencies

(1) Required expenditure amounts

(A) In general

With respect to each fiscal year through fiscal year 2025, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for

that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

(B) Expenditure amounts

The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

- (i) 0.15 percent for each fiscal year through fiscal year 2003;
- (ii) 0.3 percent for each of fiscal years 2004 through 2011;
- (iii) 0.35 percent for each of fiscal years 2012 and 2013;
- (iv) 0.40 percent for each of fiscal years 2014 and 2015; and
- (v) 0.45 percent for fiscal year 2016 and each fiscal year thereafter.

(2) Limitations

A Federal agency shall not—

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(o) Federal agency STTR authority

Each Federal agency required to establish an STTR program in accordance with subsection (n) and regulations issued under this chapter, shall—

- (1) unilaterally determine categories of projects to be included in its STTR program;
- (2) issue STTR solicitations in accordance with a schedule determined cooperatively with the Administration;

(3) unilaterally determine research topics within the agency's STTR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified—

(A) by the National Critical Technologies Panel (or its successor) in reports required under section 6683 ¹ of title 42; or

(B) by the Secretary of Defense, in accordance with section 2522 ¹ of title 10;

(4)(A) unilaterally receive and evaluate proposals resulting from STTR solicitations; and

(B) make a final decision on each proposal submitted under the STTR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension for a solicitation, not later than 90 days after the date that would be applicable to the agency under clause (i);

(5) unilaterally select awardees for its STTR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be

allowable under the funding agreement;

(6) administer its own STTR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of the completion of such requirements;

(8) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, a section on its STTR program, which section shall describe whether or not the Federal agency complied with the requirements of subsection (n) for the year covered by that plan and include a justification for failure to comply (if applicable),³ and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives;

(9) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from applicants and awardees as is necessary to assess the STTR program outputs and outcomes, including information necessary to maintain the database described in subsection (k), including—

(A) whether an applicant or awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the applicant or awardee has received as of the date of the application or award, as applicable; and

(II) the amount of additional capital that the applicant or awardee has invested in the STTR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator;²

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;²

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 1001 of title 20; or

(vi) is located in a State in which the total value of contracts awarded to small business concerns under all STTR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2008, based on the most recent statistics compiled by the Administrator;

(B) if an awardee receives an award in an amount that is more than the award guidelines under this section, a statement from the agency that justifies the award amount; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(10) submit an annual report on the STTR program to the Administration and the Office of Science and Technology Policy;

(11) adopt the agreement developed by the Administrator under subsection (w) as the agency's model agreement for allocating between small business concerns and research institutions

intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(12) develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that federally funded research and development centers (as defined in subsection (e)(8)) that participate in STTR agreements—

(A) are free from organizational conflicts of interests relative to the STTR program;

(B) do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(C) use outside peer review, as appropriate;

(13) not later than July 31, 1993, develop procedures for assessing the commercial merit and feasibility of STTR proposals, as evidenced by—

(A) the small business concern's record of successfully commercializing STTR or other research;

(B) the existence of Phase II funding commitments from private sector or non-STTR funding sources;

(C) the existence of Phase III follow-on commitments for the subject of the research; and

(D) the presence of other indicators of the commercial potential of the idea;

(14) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program;

(15) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing);

(16) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR program of the Federal agency;

(17) require each small business concern submitting a proposal or application for a federally funded award to disclose in the proposal or application—

(A) the identity of all owners and covered individuals of the small business concern who are a party to any foreign talent recruitment program of any foreign country of concern, including the People's Republic of China;

(B) the existence of any joint venture or subsidiary of the small business concern that is based in, funded by, or has a foreign affiliation with any foreign country of concern, including the People's Republic of China;

(C) any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity;

(D) whether the small business concern is wholly owned in the People's Republic of China or another foreign country;

(E) the percentage, if any, of venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of concern, including the People's Republic of China;

(F) any technology licensing or intellectual property sales to a foreign country of concern, including the People's Republic of China, during the 5-year period preceding submission of the proposal; and

(G) any foreign business entity, offshore entity, or entity outside the United States related to the small business concern;

(18) after reviewing the disclosures of a small business concern under paragraph (17), and if determined appropriate by the head of such Federal agency, request such small business concern to provide true copies of any contractual or financial obligation or other agreement specific to a

business arrangement, or joint-venture like arrangement with an enterprise owned by a foreign state or any foreign entity in effect during the 5-year period preceding submission of the proposal with respect to which such small business concern made such disclosures;

(19) not make an award under the STTR program of the Federal agency to a small business concern if the head of the Federal agency determines that—

(A) the small business concern submitting the proposal or application—

(i) has an owner or covered individual that is party to a malign foreign talent recruitment program;

(ii) has a business entity, parent company, or subsidiary located in the People's Republic of China or another foreign country of concern; or

(iii) has an owner or covered individual that has a foreign affiliation with a research institution located in the People's Republic of China or another foreign country of concern; and

(B) the relationships and commitments described in clauses (i) through (iii) of subparagraph (A)—

(i) interfere with the capacity for activities supported by the Federal agency to be carried out;

(ii) create duplication with activities supported by the Federal agency;

(iii) present concerns about conflicts of interest;

(iv) were not appropriately disclosed to the Federal agency;

(v) violate Federal law or terms and conditions of the Federal agency; or

(vi) pose a risk to national security;

(20) require a small business concern receiving an award under its STTR program to repay all amounts received from the Federal agency under the award if—

(A) the small business concern makes a material misstatement that the Federal agency determines poses a risk to national security; or

(B) there is a change in ownership, change to entity structure, or other substantial change in circumstances of the small business concern that the Federal agency determines poses a risk to national security; and

(21) require a small business concern receiving an award under its STTR program to regularly report to the Federal agency and the Administration throughout the duration of the award on—

(A) any change to a disclosure required under subparagraphs (A) through (G) of paragraph (17);

(B) any material misstatement made under paragraph (20)(A); and

(C) any change described in paragraph (20)(B).

(p) STTR policy directive

(1) Issuance

The Administrator shall issue a policy directive for the general conduct of the STTR programs within the Federal Government. Such policy directive shall be issued after consultation with—

(A) the heads of each of the Federal agencies required by subsection (n) to establish an STTR program;

(B) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and

(C) the Director of the Office of Federal Procurement Policy.

(2) Contents

The policy directive required by paragraph (1) shall provide for—

(A) simplified, standardized, and timely STTR solicitations;

(B) a simplified, standardized funding process that provides for—

(i) the timely receipt and review of proposals;

- (ii) outside peer review, if appropriate;
- (iii) protection of proprietary information provided in proposals;
- (iv) selection of awardees;
- (v) retention by a small business concern of the rights to data generated by the concern in the performance of an STTR award for a period of not less than 4 years;
- (vi) continued use by a small business concern, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of the STTR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;
- (vii) cost sharing;
- (viii) cost principles and payment schedules; and
- (ix) 1-year awards for Phase I of an STTR program, generally not to exceed \$150,000, and 2-year awards for Phase II of an STTR program, generally not to exceed \$1,000,000, (each of which the Administrator shall adjust for inflation annually) greater or lesser amounts to be awarded at the discretion of the awarding agency, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project;

(C) minimizing regulatory burdens associated with participation in STTR programs;

(D) guidelines for a model agreement, to be used by all agencies, for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(E) procedures to ensure that—

(i) a recipient of an STTR award is a small business concern, as defined in section 632 of this title and the regulations promulgated thereunder; and

(ii) such small business concern exercises management and control of the performance of the STTR funding agreement pursuant to a business plan providing for the commercialization of the technology that is the subject matter of the award;

(F) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an STTR program enters into follow-on, non-STTR funding agreements with the small business concern for such research, development, or production; and

(G) procedures to ensure that procurement center representatives (as described in section 644(l) of this title)—

(i) consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in the STTR program, particularly in Phase III;

(ii) provide technical assistance to such concerns to submit a bid for an award of a Federal contract; and

(iii) consult with the appropriate personnel from the relevant Federal agency in providing the assistance described in clause (i).

(3) Modifications

Not later than 120 days after October 15, 2001, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III.

(q) Discretionary technical and business assistance

(1) In general

Each Federal agency required by this section to conduct an SBIR program or STTR program may enter into an agreement with 1 or more vendors selected under paragraph (2)(A) to provide small business concerns engaged in SBIR or STTR projects with technical and business assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies, assistance with product sales, intellectual property protections, market research,

market validation, and development of regulatory plans and manufacturing plans, or access to technical and business literature available through on-line data bases, for the purpose of assisting such concerns in—

- (A) making better technical decisions concerning such projects;
- (B) solving technical problems which arise during the conduct of such projects;
- (C) minimizing technical risks associated with such projects; and
- (D) developing and commercializing new commercial products and processes resulting from such projects, including intellectual property protections.

(2) Vendor selection

(A) In general

Each agency may select 1 or more vendors from which small business concerns may obtain assistance in meeting the goals listed in paragraph (1) for a term not to exceed 5 years. Such selection shall be competitive and shall utilize merit-based criteria.

(B) Selection by small business concern

A small business concern may, by contract or otherwise, select 1 or more vendors to assist the small business concern in meeting the goals listed in paragraph (1).

(3) Additional technical assistance

(A) Phase I

A Federal agency described in paragraph (1) may—

- (i) provide to the recipient of a Phase I SBIR or STTR award, through a vendor selected under paragraph (2)(A), the services described in paragraph (1), in an amount equal to not more than \$6,500 per year; or
- (ii) authorize the recipient of a Phase I SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than \$6,500 per year, which shall be in addition to the amount of the recipient's award.

(B) Phase II

A Federal agency described in paragraph (1) may—

- (i) provide to the recipient of a Phase II SBIR or STTR award, through a vendor selected under paragraph (2)(A), the services described in paragraph (1), in an amount equal to not more than \$50,000 per project; or
- (ii) authorize the recipient of a Phase II SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than \$50,000 per project, which may, as determined appropriate by the head of the Federal agency, be included as part of the recipient's award or be in addition to the amount of the recipient's award.

(C) Flexibility

In carrying out subparagraphs (A) and (B), each Federal agency shall provide the allowable amounts to a recipient that meets the eligibility requirements under the applicable subparagraph, if the recipient requests to seek technical or business assistance from an individual or entity other than a vendor selected under paragraph (2)(A) by the Federal agency. Business-related services aimed at improving the commercialization success of a small business concern may be obtained from an entity, such as a public or private organization or an agency of or other entity established or funded by a State that facilitates or accelerates the commercialization of technologies or assists in the creation and growth of private enterprises that are commercializing technology.

(D) Limitation

A Federal agency may not—

- (i) use the amounts authorized under subparagraph (A) or (B) unless 1 or more vendors selected under paragraph (2)(A) provides the technical or business assistance to the recipient; or

(ii) enter a contract with a vendor under paragraph (2)(A) under which the amount provided for technical or business assistance is based on total number of Phase I or Phase II awards.

(E) Multiple award recipients

The Administrator shall establish a limit on the amount of technical and business assistance services that may be received or purchased under subparagraph (B) by a small business concern that has received multiple Phase II SBIR or STTR awards for a fiscal year.

(4) Annual reporting

(A) In general

A small business concern that receives technical or business assistance from a vendor under this subsection during a fiscal year shall submit to the Federal agency contracting with the vendor a description of the technical or business assistance provided and the benefits and results of the technical or business assistance provided.

(B) Use of existing reporting mechanism

The information required under subparagraph (A) shall be collected by a Federal agency as part of a report required to be submitted by small business concerns engaged in SBIR or STTR projects of the Federal agency for which the requirement was in effect on August 13, 2018.

(r) Phase III agreements, competitive procedures, and justification for awards

(1) In general

In the case of a small business concern that is awarded a funding agreement for Phase II of an SBIR or STTR program, a Federal agency may enter into a Phase III agreement with that business concern for additional work to be performed during or after the Phase II period. The Phase II funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to Phase III agreements with that agency or any other agency.

(2) Definition

In this subsection, the term "Phase III agreement" means a follow-on, non-SBIR or non-STTR funded contract as described in paragraph (4)(C) or paragraph (6)(C) of subsection (e).

(3) Intellectual property rights

Each funding agreement under an SBIR or STTR program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(4) Competitive procedures and justification for awards

To the greatest extent practicable, Federal agencies and Federal prime contractors shall—

(A) consider an award under the SBIR program or the STTR program to satisfy the requirements under sections 3201 through 3205 of title 10 and any other applicable competition requirements; and

(B) issue, without further justification, Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

(s) Competitive selection procedures for SBIR and STTR programs

All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(t) Inclusion in strategic plans

Program information relating to the SBIR and STTR programs shall be included by each Federal agency in any update or revision required of the Federal agency under section 306(b) of title 5.

(u) Coordination of technology development programs

(1) Definition of technology development program

In this subsection, the term "technology development program" means—

- (A) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 1862g of title 42;
- (B) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;
- (C) the Experimental Program to Stimulate Competitive Research of the Department of Energy;
- (D) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;
- (E) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;
- (F) the Institutional Development Award Program of the National Institutes of Health; and
- (G) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(2) Coordination requirements

Each Federal agency that is subject to subsection (f) and that has established a technology development program may, in each fiscal year, review for funding under that technology development program—

(A) any proposal to provide outreach and assistance to one or more small business concerns interested in participating in the SBIR program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

- (i) a State that is eligible to participate in that program; or
- (ii) a State described in paragraph (3); or

(B) any proposal for Phase I of the SBIR program, if the proposal, though meritorious, is not funded through the SBIR program for that fiscal year due to funding restraints, from a small business concern located in—

- (i) a State that is eligible to participate in a technology development program; or
- (ii) a State described in paragraph (3).

(3) Additionally eligible State

A State referred to in subparagraph (A)(ii) or (B)(ii) of paragraph (2) is a State in which the total value of contracts awarded to small business concerns under all SBIR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2000, based on the most recent statistics compiled by the Administrator.

(v) Reducing paperwork and compliance burden

(1) Standardization of reporting requirements

The Administrator shall work with the Federal agencies required by this section to have an SBIR or STTR program to standardize reporting requirements for the collection of data from SBIR or STTR applicants and awardees, including data for inclusion in the database under subsection (k), taking into consideration the unique needs of each agency, and to the extent possible, permitting the updating of previously reported information by electronic means. Such requirements shall be designed to minimize the burden on small businesses.

(2) Simplification of application and award process

Not later than 1 year after December 31, 2011, and after a period of public comment, the Administrator shall issue regulations or guidelines, taking into consideration the unique needs of each Federal agency, to ensure that each Federal agency required to carry out an SBIR program or STTR program simplifies and standardizes the program proposal, selection, contracting,

compliance, and audit procedures for the SBIR program or STTR program of the Federal agency (including procedures relating to overhead rates for applicants and documentation requirements) to reduce the paperwork and regulatory compliance burden on small business concerns applying to and participating in the SBIR program or STTR program.

(w) STTR model agreement for intellectual property rights

(1) In general

The Administrator shall promulgate regulations establishing a single model agreement for use in the STTR program that allocates between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

(2) Opportunity for comment

In promulgating regulations under paragraph (1), the Administrator shall provide to affected agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.

(x) Research and development focus

(1) Revision and update of criteria and procedures of identification

In carrying out subsection (g), the Secretary of Defense shall, not less often than once every 4 years, revise and update the criteria and procedures utilized to identify areas of the research and development efforts of the Department of Defense which are suitable for the provision of funds under the Small Business Innovation Research Program and the Small Business Technology Transfer Program.

(2) Utilization of plans

The criteria and procedures described in paragraph (1) shall be developed through the use of the most current versions of the following plans:

(A) The Joint Warfighting Science and Technology Plan required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 10 U.S.C. 2501 note).¹

(B) The Defense Technology Area Plan of the Department of Defense.

(C) The Basic Research Plan of the Department of Defense.

(3) Input in identification of areas of effort

The criteria and procedures described in paragraph (1) shall include input in the identification of areas of research and development efforts described in that paragraph from Department of Defense program managers (PMs) and program executive officers (PEOs).

(y) Commercialization Readiness Program

(1) In general

The Secretary of Defense and the Secretary of each military department is authorized to create and administer a "Commercialization Readiness Program" to accelerate the transition of technologies, products, and services developed under the Small Business Innovation Research Program or Small Business Technology Transfer Program to Phase III, including the acquisition process. The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR program that enhances the insertion or transition of SBIR or STTR technologies, including any such program in effect on January 6, 2006.

(2) Identification of research programs for accelerated transition to acquisition process

In carrying out the Commercialization Readiness Program, the Secretary of Defense and the Secretary of each military department shall identify research programs of the Small Business Innovation Research Program or Small Business Technology Transfer Program that have the potential for rapid transitioning to Phase III and into the acquisition process.

(3) Limitation

No research program may be identified under paragraph (2) unless the Secretary of the military department concerned certifies in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

(4) Funding

(A) In general

The Secretary of Defense and each Secretary of a military department may use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program for payment of expenses incurred to administer the Commercialization Readiness Program under this subsection.

(B) Limitations

The funds described in subparagraph (A)—

- (i) shall not be subject to the limitations on the use of funds in subsection (f)(2); and
- (ii) shall not be used to make Phase III awards.

(5) Insertion incentives

For any contract with a value of not less than \$100,000,000, the Secretary of Defense is authorized to—

- (A) establish goals for the transition of Phase III technologies in subcontracting plans; and
- (B) require a prime contractor on such a contract to report the number and dollar amount of contracts entered into by that prime contractor for Phase III SBIR or STTR projects.

(6) Goal for SBIR and STTR technology insertion

The Secretary of Defense shall—

- (A) set a goal to increase the number of Phase II SBIR contracts and the number of Phase II STTR contracts awarded by the Secretary that lead to technology transition into programs of record or fielded systems;
- (B) use incentives in effect on December 31, 2011, or create new incentives, to encourage agency program managers and prime contractors to meet the goal under subparagraph (A); and
- (C) submit to the Administrator for inclusion in the annual report under subsection (b)(7)—
 - (i) the number and percentage of Phase II SBIR and STTR contracts awarded by the Secretary that led to technology transition into programs of record or fielded systems;
 - (ii) information on the status of each project that received funding through the Commercialization Readiness Program and efforts to transition those projects into programs of record or fielded systems; and
 - (iii) a description of each incentive that has been used by the Secretary under subparagraph (B) and the effectiveness of that incentive with respect to meeting the goal under subparagraph (A).

(z) Encouraging innovation in energy efficiency

(1) Federal agency energy-related priority

In carrying out its duties under this section relating to SBIR and STTR solicitations by Federal departments and agencies, the Administrator shall—

- (A) ensure that such departments and agencies give high priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects; and
- (B) include in the annual report to Congress under subsection (b)(7) a determination of whether the priority described in subparagraph (A) is being carried out.

(2) Consultation required

The Administrator shall consult with the heads of other Federal departments and agencies in determining whether priority has been given to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects, as required by this subsection.

(3) Guidelines

The Administrator shall, as soon as is practicable after December 19, 2007, issue guidelines and directives to assist Federal agencies in meeting the requirements of this subsection.

(4) Definitions

In this subsection—

(A) the term "biomass"—

(i) means any organic material that is available on a renewable or recurring basis, including—

- (I) agricultural crops;
- (II) trees grown for energy production;
- (III) wood waste and wood residues;
- (IV) plants (including aquatic plants and grasses);
- (V) residues;
- (VI) fibers;
- (VII) animal wastes and other waste materials; and
- (VIII) fats, oils, and greases (including recycled fats, oils, and greases); and

(ii) does not include—

- (I) paper that is commonly recycled; or
- (II) unsegregated solid waste;

(B) the term "energy efficiency project" means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(C) the term "renewable energy system" means a system of energy derived from—

- (i) a wind, solar, biomass (including biodiesel), or geothermal source; or
- (ii) hydrogen derived from biomass or water using an energy source described in clause (i).

(aa) Limitation on size of awards

(1) Limitation

No Federal agency may issue an award under the SBIR program or the STTR program if the size of the award exceeds the award guidelines established under this section by more than 50 percent.

(2) Maintenance of information

Participating agencies shall maintain information on awards exceeding the guidelines established under this section, including—

- (A) the amount of each award;
- (B) a justification for exceeding the guidelines for each award;
- (C) the identity and location of each award recipient; and
- (D) whether an award recipient has received any venture capital, hedge fund, or private equity firm investment and, if so, whether the recipient is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(3) Reports

The Administrator shall include the information described in paragraph (2) in the annual report of the Administrator to Congress.

(4) Waiver for specific topic

Upon the receipt of an application from a Federal agency, the Administrator may grant a waiver

from the requirement under paragraph (1) with respect to a specific topic (but not for the agency as a whole) for a fiscal year if the Administrator determines, based on the information contained in the application from the agency, that—

(A) the requirement under paragraph (1) will interfere with the ability of the agency to fulfill its research mission through the SBIR program or the STTR program; and

(B) the agency will minimize, to the maximum extent possible, the number of awards that do not satisfy the requirement under paragraph (1) to preserve the nature and intent of the SBIR program and the STTR program.

(5) Rule of construction

Nothing in this subsection shall be construed to prevent a Federal agency from supplementing an award under the SBIR program or the STTR program using funds of the Federal agency that are not part of the SBIR program or the STTR program of the Federal agency.

(bb) Subsequent Phase II awards

(1) Agency flexibility

A small business concern that received a Phase I award from a Federal agency under this section shall be eligible to receive a subsequent Phase II award from another Federal agency, if the head of each relevant Federal agency or the relevant component of the Federal agency makes a written determination that the topics of the relevant awards are the same and both agencies report the awards to the Administrator for inclusion in the public database under subsection (k).

(2) SBIR and STTR program flexibility

A small business concern that received a Phase I award under this section under the SBIR program or the STTR program may receive a subsequent Phase II award in either the SBIR program or the STTR program and the participating agency or agencies shall report the awards to the Administrator for inclusion in the public database under subsection (k).

(3) Preventing duplicative awards

The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(cc) Phase flexibility

During fiscal years 2012 through 2025, the National Institutes of Health, the Department of Defense, and the Department of Education may each provide to a small business concern an award under Phase II of the SBIR program with respect to a project, without regard to whether the small business concern was provided an award under Phase I of an SBIR program with respect to such project, if the head of the applicable agency determines that the small business concern has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided a Phase I award.

(dd) Participation of small business concerns majority-owned by venture capital operating companies, hedge funds, or private equity firms in the SBIR program

(1) Authority

Upon providing a written determination described in paragraph (2) to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, not later than 30 days before the date on which any such award is made—

(A) the Director of the National Institutes of Health, the Secretary of Energy, and the Director of the National Science Foundation may award not more than 25 percent of the funds allocated for the SBIR program of the applicable Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns; and

(B) the head of a Federal agency other than a Federal agency described in subparagraph (A) that participates in the SBIR program may award not more than 15 percent of the funds allocated for the SBIR program of the Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns.

(2) Determination

A written determination described in this paragraph is a written determination by the head of a Federal agency that explains how the use of the authority under paragraph (1) will—

- (A) induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;
- (B) substantially contribute to the mission of the Federal agency;
- (C) demonstrate a need for public research; and
- (D) otherwise fulfill the capital needs of small business concerns for additional financing for SBIR projects.

(3) Registration

A small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and qualified for participation in the program authorized under paragraph (1) shall—

- (A) register with the Administrator on the date that the small business concern submits an application for an award under the SBIR program; and
- (B) indicate in any SBIR proposal that the small business concern is registered under subparagraph (A) as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(4) Compliance

(A) In general

The head of a Federal agency that makes an award under this subsection during a fiscal year shall collect and submit to the Administrator data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year.

(B) Annual reporting

The Administrator shall include as part of each annual report by the Administration under subsection (b)(7) any data submitted under subparagraph (A) and a discussion of the compliance of each Federal agency that makes an award under this subsection during the fiscal year with the maximum percentages under paragraph (1).

(5) Enforcement

If a Federal agency awards more than the percent of the funds allocated for the SBIR program of the Federal agency authorized under paragraph (1) for a purpose described in paragraph (1), the head of the Federal agency shall transfer an amount equal to the amount awarded in excess of the amount authorized under paragraph (1) to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency not later than 180 days after the date on which the Federal agency made the award that caused the total awarded under paragraph (1) to be more than the amount authorized under paragraph (1) for a purpose described in paragraph (1).

(6) Final decisions on applications under the SBIR program

(A) Definition

In this paragraph, the term "covered small business concern" means a small business concern that—

- (i) was not majority-owned by multiple venture capital operating companies, hedge funds,

or private equity firms on the date on which the small business concern submitted an application in response to a solicitation under the SBIR programs; and

(ii) on the date of the award under the SBIR program is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(B) In general

If a Federal agency does not make an award under a solicitation under the SBIR program before the date that is 9 months after the date on which the period for submitting applications under the solicitation ends—

(i) a covered small business concern is eligible to receive the award, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR program for a small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms, if the covered small business concern meets all other requirements for such an award; and

(ii) the head of the Federal agency shall transfer an amount equal to any amount awarded to a covered small business concern under the solicitation to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency, not later than 90 days after the date on which the Federal agency makes the award.

(7) Evaluation criteria

A Federal agency may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for the award of contracts under the SBIR program or STTR program.

(ee) Collaborating with Federal laboratories and research and development centers

(1) Authorization

Subject to the limitations under this section, the head of each participating Federal agency may make SBIR and STTR awards to any eligible small business concern that—

(A) intends to enter into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award; or

(B) has entered into a cooperative research and development agreement (as defined in section 3710a(d) of this title) with a Federal laboratory.

(2) Prohibition

No Federal agency shall—

(A) condition an SBIR or STTR award upon entering into agreement with any Federal laboratory or any federally funded laboratory or research and development center for any portion of the activities to be performed under that award;

(B) approve an agreement between a small business concern receiving an SBIR or STTR award and a Federal laboratory or federally funded laboratory or research and development center, if the small business concern performs a lesser portion of the activities to be performed under that award than required by this section and by the SBIR Policy Directive and the STTR Policy Directive of the Administrator; or

(C) approve an agreement that violates any provision, including any data rights protections provision, of this section or the SBIR and the STTR Policy Directives.

(3) Implementation

Not later than 180 days after December 31, 2011, the Administrator shall modify the SBIR Policy Directive and the STTR Policy Directive issued under this section to ensure that small business concerns—

(A) have the flexibility to use the resources of the Federal laboratories or federally funded research and development centers; and

(B) are not mandated to enter into agreement with any Federal laboratory or any federally funded laboratory or research and development center as a condition of an award.

(4) Advance payment

If a small business concern receiving an award under this section enters into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award, the Federal laboratory or federally funded research and development center may not require advance payment from the small business concern in an amount greater than the amount necessary to pay for 30 days of such activities.

(ff) Additional SBIR and STTR awards

(1) Express authority for awarding a sequential Phase II award

A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) Preventing duplicative awards

The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(gg) Pilot program

(1) Authorization

The head of each covered Federal agency may allocate not more than 10 percent of the funds allocated to the SBIR program and the STTR program of the covered Federal agency—

(A) for awards for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR Phase II technologies; or

(B) to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

(2) Application by Federal agency

(A) In general

A covered Federal agency may not establish a pilot program unless the covered Federal agency makes a written application to the Administrator, not later than 90 days before the first day of the fiscal year in which the pilot program is to be established, that describes a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

(B) Determination

The Administrator shall—

(i) make a determination regarding an application submitted under subparagraph (A) not later than 30 days before the first day of the fiscal year for which the application is submitted;

(ii) publish the determination in the Federal Register; and

(iii) make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(3) Maximum amount of award

The head of a covered Federal agency may not make an award under a pilot program in excess of 3 times the dollar amounts generally established for Phase II awards under subsection (j)(2)(D) or (p)(2)(B)(ix).

(4) Registration

Any applicant that receives an award under a pilot program shall register with the Administrator in a registry that is available to the public.

(5) Award criteria or consideration

When making an award under this section, the head of a covered Federal agency shall give consideration to whether the technology to be supported by the award is likely to be manufactured in the United States.

(6) Report

The head of each covered Federal agency shall include in the annual report of the covered Federal agency to the Administrator an analysis of the various activities considered for inclusion in the pilot program of the covered Federal agency and a statement of the reasons why each activity considered was included or not included, as the case may be.

(7) Termination

The authority to establish a pilot program under this section expires at the end of fiscal year 2025.

(8) Definitions

In this subsection—

(A) the term "covered Federal agency"—

- (i) means a Federal agency participating in the SBIR program or the STTR program; and
- (ii) does not include the Department of Defense; and

(B) the term "pilot program" means each program established under paragraph (1).

(hh) Timing of release of funding

(1) In general

Federal agencies participating in the SBIR program or STTR program shall, to the extent possible, shorten the amount of time between the provision of notice of an award under the SBIR program or STTR program and the subsequent release of funding with respect to the award.

(2) Pilot program to accelerate Department of Defense SBIR and STTR awards

(A) In general

Not later than 1 year after August 13, 2018, the Under Secretary of Defense for Research and Engineering, acting through the Director of Defense Procurement and Acquisition Policy of the Department of Defense, shall establish a pilot program to reduce the time for awards under the SBIR and STTR programs of the Department of Defense, under which the Department of Defense shall—

- (i) develop simplified and standardized procedures and model contracts throughout the Department of Defense for Phase I, Phase II, and Phase III SBIR awards;
- (ii) for Phase I SBIR and STTR awards, reduce the amount of time between solicitation closure and award;
- (iii) for Phase II SBIR and STTR awards, reduce the amount of time between the end of a Phase I award and the start of the Phase II award;
- (iv) for Phase II SBIR and STTR awards that skip Phase I, reduce the amount of time between solicitation closure and award;
- (v) for sequential Phase II SBIR and STTR awards, reduce the amount of time between Phase II awards; and
- (vi) reduce the award times described in clauses (ii), (iii), (iv), and (v) to be as close to 90 days as possible.

(B) Consultation

In carrying out the pilot program under subparagraph (A), the Director of Defense Procurement and Acquisition Policy of the Department of Defense shall consult with the Director of the Office of Small Business Programs of the Department of Defense.

(C) Termination

The pilot program under subparagraph (A) shall terminate on September 30, 2025.

(ii) Reporting on timing

(1) In general

Federal agencies participating in the SBIR program or STTR program shall provide to the Administrator, for the annual report on the SBIR and STTR program under subsection (b)(7), the average amount of time the agency takes to make a final decision on proposals submitted under such programs, the average amount of time the agency takes to release funding with respect to an award under such programs, and the goals established to reduce such amounts.

(2) Comptroller General reports

The Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Armed Services of the Senate, the Committee on Small Business of the House of Representatives, and the Committee on Armed Services of the House of Representatives—

(A) not later than 1 year after August 13, 2018, and every year thereafter for 3 years, a report that—

(i) provides the average and median amount of time that each component of the Department of Defense with an SBIR or STTR program takes to review and make a final decision on proposals submitted under the program; and

(ii) compares that average and median amount of time with that of other Federal agencies participating in the SBIR or STTR program; and

(B) not later than December 5, 2021, a report that—

(i) includes the information described in subparagraph (A);

(ii) assesses where each Federal agency participating in the SBIR or STTR program needs improvement with respect to the proposal review and award times under the program;

(iii) identifies best practices for shortening the proposal review and award times under the SBIR and STTR programs, including the pros and cons of using contracts compared to grants; and

(iv) analyzes the efficacy of the pilot program established under subsection (hh)(2).

(jj) Phase 0 Proof of Concept Partnership pilot program

(1) In general

The Director of the National Institutes of Health may use \$5,000,000 of the funds allocated under subsection (n)(1) for a Proof of Concept Partnership pilot program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. To implement this program, the Director shall award, through a competitive, merit-based process, grants to qualifying institutions. These grants shall only be used to administer Proof of Concept Partnership awards in conformity with this subsection.

(2) Definitions

In this subsection—

(A) the term "Director" means the Director of the National Institutes of Health;

(B) the term "pilot program" refers to the Proof of Concept Partnership pilot program; and

(C) the terms "qualifying institution" and "institution" mean a university or other research institution that participates in the National Institutes of Health's STTR program.

(3) Proof of Concept Partnerships

(A) In general

A Proof of Concept Partnership shall be set up by a qualifying institution to award grants to individual researchers. These grants should provide researchers with the initial investment and the resources to support the proof of concept work and commercialization mentoring needed to translate promising research projects and technologies into a viable company. This work may