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(Original Signature of Member)

113TH CONGRESS
1ST SESSION **H. R.**

To enact certain laws relating to small business as title 53, United States Code, "Small Business".

IN THE HOUSE OF REPRESENTATIVES

, 2013

_____ introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To enact certain laws relating to small business as title 53, United States Code, "Small Business".

1 *Be it enacted by the Senate and House of Representatives of the United*
2 *States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; restatement does not change meaning or effect of existing law.
- Sec. 3. Enactment of title 53, United States Code.
- Sec. 4. Conforming amendments.
- Sec. 5. Transitional and savings provisions.
- Sec. 6. Repeals.

5 **SEC. 2. PURPOSE; RESTATEMENT DOES NOT CHANGE MEANING OR EF-**
6 **FFECT OF EXISTING LAW.**

7 (a) PURPOSE.—The purpose of this Act is to enact a restatement of cer-
8 tain existing law relating to small business as a positive law title of the
9 United States Code.

1 (b) RESTATEMENT DOES NOT CHANGE MEANING OR EFFECT OF EXIST-
2 ING LAW.—

3 (1) IN GENERAL.—The restatement of existing law enacted by this
4 Act does not change the meaning or effect of the existing law. The re-
5 statement consolidates various provisions that were enacted separately
6 over a period of many years, reorganizing them, conforming style and
7 terminology, modernizing obsolete language, and correcting drafting er-
8 rors. These changes serve to remove ambiguities, contradictions, and
9 other imperfections, but they do not change the meaning or effect of
10 the existing law or impair the precedential value of earlier judicial deci-
11 sions or other interpretations.

12 (2) RULE OF CONSTRUCTION.—

13 (A) IN GENERAL.—Notwithstanding the plain meaning rule or
14 other rules of statutory construction, a change in wording made
15 in the restatement of existing law enacted by this Act serves to
16 clarify the existing law as indicated in paragraph (1), but not to
17 change the meaning or effect of the existing law.

18 (B) REVISION NOTES.—Subparagraph (A) applies whether or
19 not a change in wording is explained by a revision note appearing
20 in a congressional report accompanying this Act. If such a revision
21 note does appear, a court shall consider the revision note in inter-
22 preting the change.

23 **SEC. 3. ENACTMENT OF TITLE 53, UNITED STATES CODE.**

24 Title 53, United States Code, “Small Business”, is enacted as follows:

25 **TITLE 53—SMALL BUSINESS**

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1 **Subtitle I—General Provisions**
2 **Chapter 101—Declarations; Definitions;**
3 **Small Business Concerns**

Sec.

101101. Declarations.
101102. Definitions.
101103. Small business concerns.

4 **§ 101101. Declarations**

5 (a) IN GENERAL.—

6 (1) FREE COMPETITION.—The essence of the American economic
7 system of private enterprise is free competition. Only through full and

1 free competition can free markets, free entry into business, and oppor-
2 tunities for the expression and growth of personal initiative and individ-
3 ual judgment be assured. The preservation and expansion of such com-
4 petition is basic not only to the economic well-being but to the security
5 of this Nation. National security and well-being cannot be realized un-
6 less the actual and potential capacity of small business is encouraged
7 and developed.

8 (2) POLICY.—It is the policy of Congress that the Government
9 should aid, counsel, assist, and protect, insofar as is possible, the inter-
10 ests of small business concerns in order to—

11 (A) preserve free competitive enterprise;

12 (B) ensure that a fair proportion of the total purchases and
13 contracts or subcontracts for property and services for the Govern-
14 ment (including contracts or subcontracts for maintenance, repair,
15 and construction) be placed with small business concerns;

16 (C) ensure that a fair proportion of the total sales of Govern-
17 ment property be made to small business concerns; and

18 (D) maintain and strengthen the overall economy of the Nation.

19 (b) INTERNATIONAL TRADE.—

20 (1) POLICY.—It is the policy of Congress that the Federal Govern-
21 ment, through the Administrator, acting through the Associate Admin-
22 istrator for International Trade and in cooperation with the Depart-
23 ment of Commerce and other relevant State and Federal agencies,
24 should assist small businesses to increase their ability to compete in
25 international markets by—

26 (A) enhancing their ability to export;

27 (B) facilitating technology transfers;

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

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

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

37 (F) ensuring that the interests of small business concerns are
38 adequately represented in bilateral and multilateral trade negotia-
39 tions.

40 (2) RESPECTIVE AGENCY ROLES.—Congress recognizes that the De-
41 partment of Commerce is the principal Federal agency for trade devel-

1 opment and export promotion and that the Department of Commerce
2 and the Small Business Administration work together to advance joint
3 interests. It is the purpose of this subtitle and subtitle II to enhance,
4 not alter, their respective roles.

5 (e) AGRICULTURE AND RELATED INDUSTRIES.—It is the policy of Con-
6 gress that the Government, through the Small Business Administration,
7 should assist small business concerns that are engaged in—

- 8 (1) the production of food and fiber;
- 9 (2) ranching;
- 10 (3) raising of livestock;
- 11 (4) aquaculture; or
- 12 (5) any other industry relating to agriculture.

13 (d) BUSINESS DEVELOPMENT PROGRAM.—

14 (1) 1978.—

15 (A) FINDINGS.—With respect to the business development pro-
16 gram, Congress finds that—

17 (i)(I) ownership and control of productive capital is con-
18 centrated in the economy of the United States; and

19 (II) certain groups, therefore, own and control little pro-
20 ductive capital;

21 (ii) certain groups in the United States own and control lit-
22 tle productive capital because they have limited opportunities
23 for small business ownership;

24 (iii) the broadening of small business ownership among
25 groups that, on October 24, 1978, owned and controlled little
26 productive capital is essential to provide for the well-being of
27 this Nation by promoting their increased participation in the
28 free enterprise system of the United States;

29 (iv) such development of business ownership among groups
30 that, on October 24, 1978, owned and controlled little produc-
31 tive capital will be greatly facilitated through the creation of
32 a small business ownership development program, which shall
33 provide services including financial, management, and tech-
34 nical assistance;

35 (v) the power to let Federal contracts under the business
36 development program can be an effective procurement assist-
37 ance tool for development of business ownership among
38 groups that own and control little productive capital;

39 (vi) the opportunity for full participation in our free enter-
40 prise system by socially and economically disadvantaged per-
41 sons is essential if we are to obtain social and economic

6

1 equality for such persons and improve the functioning of our
2 national economy;

3 (vii) many such persons are socially disadvantaged because
4 of their identification as members of certain groups that have
5 suffered the effects of discriminatory practices or similar in-
6 vidious circumstances over which they have no control;

7 (viii) those groups include Black Americans, Hispanic
8 Americans, Native Americans, Indian tribes, Asian Pacific
9 Americans, Native Hawaiian Organizations, and other minori-
10 ties;

11 (ix) it is in the national interest to expeditiously ameliorate
12 the conditions of socially and economically disadvantaged
13 groups;

14 (x) those conditions can be improved by providing the max-
15 imum practicable opportunity for the development of small
16 business concerns owned by members of socially and economi-
17 cally disadvantaged groups;

18 (xi) that development can be materially advanced through
19 the procurement by the United States of articles, equipment,
20 supplies, services, materials, and construction work from
21 those concerns; and

22 (xii) those procurements also benefit the United States by
23 encouraging the expansion of suppliers for the procurements,
24 thereby encouraging competition among the suppliers and
25 promoting economy in the procurements.

26 (B) PURPOSE.—The purpose of the business development pro-
27 gram is to—

28 (i) foster business firm ownership and development by indi-
29 viduals in groups that own and control little productive cap-
30 ital;

31 (ii) promote the competitive viability of those firms in the
32 marketplace by providing such available financial, technical,
33 and management assistance as may be necessary;

34 (iii) promote the business development of small business
35 concerns owned and controlled by socially and economically
36 disadvantaged individuals so that those concerns can compete
37 on an equal basis in the American economy;

38 (iv) promote the competitive viability of those concerns in
39 the marketplace by providing such available contract, finan-
40 cial, technical, and management assistance as may be nec-
41 essary; and

1 (v) clarify and expand the program for the procurement by
2 the United States of articles, supplies, services, materials, and
3 construction work from small business concerns owned by so-
4 cially and economically disadvantaged individuals.

5 (2) 1988.—

6 (A) FINDINGS.—Congress finds that—

7 (i) the business development program and the award of
8 contracts under chapter 233 remain a primary tool for im-
9 proving opportunities for small business concerns owned and
10 controlled by socially and economically disadvantaged individ-
11 uals in the Federal procurement process and bringing those
12 concerns into the Nation's economic mainstream;

13 (ii) although some progress has resulted from the business
14 development program, it has generally failed to meet its ob-
15 jectives, which remain as valid on November 15, 1988, as
16 when the program was initiated;

17 (iii) too few concerns that have exited the business develop-
18 ment program have been prepared to compete successfully in
19 the open marketplace on competitive procurements, and many
20 concerns have developed an unhealthy dependency on sole-
21 source contracts by the time the concerns are required to
22 leave the program;

23 (iv) the application and certification process for admitting
24 new participants to the business development program is inor-
25 dinately lengthy and burdensome;

26 (v) the Administrator has often not efficiently and equi-
27 tably administered and managed the business development
28 program in a manner that provided clear lines of responsibil-
29 ity for implementing and monitoring many of the administra-
30 tive duties under the program;

31 (vi) the Administrator and some program participants have
32 given insufficient attention and support to the business devel-
33 opment goals of the business development program and in-
34 stead have focused almost entirely on the size of contract
35 awards or the number of concerns certified to participate in
36 the program;

37 (vii) many Federal procuring agencies have failed to iden-
38 tify and offer the amount of contract support necessary to
39 allow for diversification and growth of disadvantaged busi-
40 nesses participating in the business development program;

1 (viii) contract support and business development expenses
2 have been misused by both the Administrator and partici-
3 pants in the business development program and have not been
4 equitably distributed pursuant to objective criteria;

5 (ix) the widespread perception of undue political influence
6 in the operation and administration of the business develop-
7 ment program has significantly contributed to the program's
8 poor image and has deterred utilization of the program by so-
9 cially and economically disadvantaged concerns and by Fed-
10 eral procuring agencies; and

11 (x) it is imperative that increased competition and other
12 substantial reforms be accomplished in the business develop-
13 ment program to promote the Congressionally mandated busi-
14 ness development objectives and purposes.

15 (B) PURPOSES.—The purposes of Public Law 100–656 (102
16 Stat. 3853) are—

17 (i) to affirm that the business development program and
18 chapter 233 shall be used exclusively for business develop-
19 ment purposes to help small businesses owned and controlled
20 by socially and economically disadvantaged individuals com-
21 pete on an equal basis in the mainstream of the American
22 economy;

23 (ii) to affirm that the measure of success of the business
24 development program, including the authority under chapter
25 233, shall be the number of competitive firms that—

26 (I) exit the business development program without
27 being unreasonably reliant on contracts under chapter
28 233; and

29 (II) are able to compete on an equal basis in the main-
30 stream of the American economy;

31 (iii) to ensure that program benefits accrue to individuals
32 who are both socially and economically disadvantaged;

33 (iv) to increase the number of small businesses owned and
34 controlled by socially and economically disadvantaged individ-
35 uals from which the United States may purchase products
36 and services (including construction work); and

37 (v) to ensure integrity, competence, and efficiency in the
38 administration of business development services and the Fed-
39 eral contracting opportunities made available to small busi-
40 ness concerns owned and controlled by socially and economi-
41 cally disadvantaged individuals.

1 (e) VICTIMS OF FLOODS AND OTHER CATASTROPHES; SMALL BUSINESS
2 CONCERNS THAT ARE DISPLACED AS A RESULT OF FEDERALLY AIDED
3 CONSTRUCTION PROGRAMS.—It is the policy of Congress that the Govern-
4 ment should assist—

5 (1) victims of floods and other catastrophes; and

6 (2) small business concerns that are displaced as a result of federally
7 aided construction programs.

8 (f) WOMEN'S BUSINESS OWNERSHIP.—

9 (1) FINDINGS.—With respect to the programs and activities author-
10 ized by this subtitle and subtitle II, Congress finds that—

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

14 (B) over the 2 decades preceding October 25, 1988, there were
15 substantial gains in the social and economic status of women as
16 women sought economic equality and independence;

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

19 (D) that discrimination takes many overt and subtle forms hav-
20 ing an adverse impact on the ability to raise or secure capital, to
21 acquire managerial talents, and to capture market opportunities;

22 (E) it is in the national interest to expeditiously remove dis-
23 criminatory barriers to the creation and development of small busi-
24 ness concerns owned and controlled by women;

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

28 (G) increased numbers of small business concerns owned and
29 controlled by women will directly benefit the United States Gov-
30 ernment by expanding the potential number of suppliers of goods
31 and services to the Government; and

32 (H) programs and activities designed to assist small business
33 concerns owned and controlled by women must be implemented in
34 such a way as to remove those discriminatory barriers while not
35 adversely affecting the rights of socially and economically dis-
36 advantaged individuals.

37 (2) PURPOSE.—The purpose of the programs and activities con-
38 ducted under this subtitle and subtitle II that assist women entre-
39 preneurs is to—

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

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

4 (C) require that—

5 (i) the Government engage in a systematic and sustained
6 effort to identify, define, and analyze the discriminatory bar-
7 riers facing women; and

8 (ii) that effort directly involve the participation of women
9 business owners in the public/private sector partnership.

10 (g) SUBCONTRACTING.—

11 (1) PARTICIPATION IN PERFORMANCE OF CONTRACTS.—It is the pol-
12 icy of the United States that qualified HUBZone small business con-
13 cerns, small business concerns owned and controlled by service-disabled
14 veterans, small business concerns owned and controlled by socially and
15 economically disadvantaged individuals, small business concerns owned
16 and controlled by veterans, small business concerns owned and con-
17 trolled by women, and other small business concerns shall have the
18 maximum practicable opportunity to participate in the performance of
19 contracts let by any Federal agency (including contracts and sub-
20 contracts for subsystems, assemblies, components, and related services
21 for major systems).

22 (2) TIMELY PAYMENT OF AMOUNTS DUE.—It is the policy of the
23 United States that its prime contractors establish procedures to ensure
24 the timely payment of amounts due pursuant to the terms of their sub-
25 contracts with qualified HUBZone small business concerns, small busi-
26 ness concerns owned and controlled by service-disabled veterans, small
27 business concerns owned and controlled by socially and economically
28 disadvantaged individuals, small business concerns owned and con-
29 trolled by veterans, small business concerns owned and controlled by
30 women, and other small business concerns.

31 (h) RESEARCH AND DEVELOPMENT.—Research and development are
32 major factors in the growth and progress of industry and the national econ-
33 omy. The expense of carrying on research and development programs is be-
34 yond the means of many small business concerns, and small business con-
35 cerns are handicapped in obtaining the benefits of research and development
36 programs conducted at Government expense. Small business concerns are
37 thereby placed at a competitive disadvantage. This weakens the competitive
38 free enterprise system and prevents the orderly development of the national
39 economy. It is the policy of Congress that assistance be given to small busi-
40 ness concerns to enable small business concerns to undertake and to obtain

1 the benefits of research and development in order to maintain and strength-
2 en the competitive free enterprise system and the national economy.

3 (i) MENTORING NETWORKS.—Congress finds that—

4 (1) the SBIR program and STTR program create jobs, increase ca-
5 pacity for technological innovation, and boost international competitive-
6 ness;

7 (2) increasing the quantity of applications from all States to the
8 SBIR program and STTR program would enhance competition for
9 awards under the FAST program and the quality of the completed
10 projects; and

11 (3) mentoring is a natural complement to the FAST program of
12 reaching out to new companies regarding the SBIR program and
13 STTR program as an effective and low cost way to improve the likeli-
14 hood that the companies will succeed in the SBIR program and STTR
15 program in developing and commercializing their research.

16 (j) INTEREST RATES CHARGED BY SMALL BUSINESS INVESTMENT COM-
17 PANIES.—The purpose of section 303112 of this title is to facilitate the or-
18 derly and necessary flow of long-term loans and equity funds from small
19 business investment companies to small business concerns.

20 (k) SBIR PROGRAMS.—

21 (1) 1982 FINDINGS AND PURPOSES.—

22 (A) FINDINGS.—Congress finds that—

23 (i) technological innovation—

24 (I) creates jobs;

25 (II) increases productivity, competition, and economic
26 growth; and

27 (III) is a valuable counterforce to inflation and the
28 United States balance-of-payments deficit;

29 (ii) while small business is the principal source of signifi-
30 cant innovations in the Nation, the vast majority of federally
31 funded research and development is conducted by large busi-
32 nesses, universities, and Government laboratories; and

33 (iii) small businesses—

34 (I) are among the most cost-effective performers of re-
35 search and development; and

36 (II) are particularly capable of developing research
37 and development results into new products.

38 (B) PURPOSES.—The purposes of Public Law 97–219 (96 Stat.
39 217) are—

40 (i) to stimulate technological innovation;

12

1 (ii) to use small business to meet Federal research and de-
2 velopment needs;

3 (iii) to foster and encourage participation by minority and
4 disadvantaged persons in technological innovation; and

5 (iv) to increase private sector commercialization innovations
6 derived from Federal research and development.

7 (2) 1992 FINDINGS AND PURPOSES.—

8 (A) FINDINGS.—Congress finds that—

9 (i) the SBIR programs have been a successful method of
10 involving small business concerns in Federal research and de-
11 velopment;

12 (ii) the SBIR programs have been an effective catalyst for
13 the development of technological innovations by small busi-
14 ness concerns;

15 (iii) SBIR program participants have provided high quality
16 research and development in a cost-effective manner;

17 (iv) the innovative products and services developed by small
18 business concerns participating in SBIR programs have been
19 important to the national defense and to the missions of the
20 other participating Federal agencies;

21 (v) SBIR programs have effectively stimulated the commer-
22 cialization of technology developed through Federal research
23 and development, benefiting the public and private sectors of
24 the Nation;

25 (vi) by encouraging the development and commercialization
26 of technological innovations, the SBIR program have created
27 jobs, expanded business opportunities for small firms, stimu-
28 lated the development of new products and services, and im-
29 proved the competitiveness of the Nation's high technology in-
30 dustries;

31 (vii) SBIR programs have helped increase exports from
32 small business concerns;

33 (viii) despite the general success of the SBIR programs,
34 the proportion of Federal research and development funds re-
35 ceived by small business concerns has not increased over the
36 life of the programs, but has remained at 3 percent; and

37 (ix) although the participating Federal agencies have suc-
38 cessfully implemented most aspects of the SBIR programs,
39 additional outreach efforts are necessary to stimulate in-
40 creased participation of socially and economically disadvan-
41 tagged small business concerns.

1 (B) PURPOSES.—The purposes of title I of Public Law 102–564
2 (106 Stat. 4249) are—

- 3 (i) to expand and improve the SBIR programs;
- 4 (ii) to emphasize the SBIR programs’ goal of increasing
5 private sector commercialization of technology developed
6 through Federal research and development;
- 7 (iii) to increase small business participation in Federal re-
8 search and development; and
- 9 (iv) to improve the Federal Government’s dissemination of
10 information concerning the SBIR programs, particularly with
11 regard to program participation by small business concerns
12 owned and controlled by women and by small business con-
13 cerns owned and controlled by socially and economically dis-
14 advantaged individuals.

15 (3) 2000 FINDINGS.—Congress finds that—

16 (A) SBIR programs are highly successful in involving small
17 businesses in federally funded research and development;

18 (B) SBIR programs made the cost-effective and unique research
19 and development capabilities possessed by the small businesses of
20 the Nation available to Federal agencies;

21 (C) the innovative goods and services developed by small busi-
22 nesses that participated in SBIR programs have produced innova-
23 tions of critical importance in a wide variety of high-technology
24 fields, including biology, medicine, education, and defense;

25 (D) SBIR programs are a catalyst in—

- 26 (i) the promotion of research and development;
- 27 (ii) the commercialization of innovative technology;
- 28 (iii) the development of new products and services; and
- 29 (iv) the continued excellence of the Nation’s high-tech-
30 nology industries; and

31 (E) the continuation of SBIR programs will—

- 32 (i) provide expanded opportunities for 1 of the Nation’s
33 vital resources, its small businesses;
- 34 (ii) foster invention, research, and technology;
- 35 (iii) create jobs; and
- 36 (iv) increase this Nation’s competitiveness in international
37 markets.

38 **§ 101102. Definitions**

39 In this title:

40 (1) ACCREDITED LENDERS PROGRAM.—The term “accredited lenders
41 program” means the program under section 331107 of this title.

14

1 (2) **ACTIVATED.**—The term “activated”, with respect to a reservist,
2 means having received an order placing the reservist on active duty.

3 (3) **ACTIVE DUTY.**—The term “active duty” has the meaning given
4 the term in section 101 of title 10.

5 (4) **ADMINISTRATOR.**—The term “Administrator” means the Admin-
6 istrator of the Small Business Administration.

7 (5) **AGRICULTURAL COMMODITY.**—The term “agricultural commod-
8 ity” has the meaning given the term in section 102 of the Agricultural
9 Trade Act of 1978 (7 U.S.C. 5602).

10 (6) **AGRICULTURAL ENTERPRISE.**—The term “agricultural enter-
11 prise” means a business engaged in—

12 (A) the production of food or fiber;

13 (B) ranching;

14 (C) raising of livestock;

15 (D) aquaculture; or

16 (E) any other industry related to agriculture.

17 (7) **ALASKA NATIVE CORPORATION.**—The term “Alaska Native Cor-
18 poration” has the meaning given the term “Native Corporation” in sec-
19 tion 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

20 (8) **ALASKA NATIVE VILLAGE.**—The term “Alaska Native Village”
21 has the meaning given the term “Native village” in section 3 of the
22 Alaska Native Claims Settlement Act (43 U.S.C. 1602).

23 (9) **ASSOCIATION.**—The term “Association” means the association of
24 small business development centers recognized under section 271102(f)
25 of this title.

26 (10) **BASE CLOSURE AREA.**—The term “base closure area” has the
27 meaning given the term in section 253101 of this title.

28 (11) **BIOMASS.**—

29 (A) **IN GENERAL.**—The term “biomass” means any organic ma-
30 terial that is available on a renewable or recurring basis.

31 (B) **INCLUSIONS.**—The term “biomass” includes—

32 (i) agricultural crops;

33 (ii) trees grown for energy production;

34 (iii) wood waste and wood residues;

35 (iv) plants (including aquatic plants and grasses);

36 (v) residues;

37 (vi) fibers;

38 (vii) animal wastes and other waste materials; and

39 (viii) fats, oils, and greases (including recycled fats, oils,
40 and greases).

41 (C) **EXCLUSIONS.**—The term “biomass” does not include—

15

1 (i) paper that is commonly recycled; or

2 (ii) unsegregated solid waste.

3 (12) BUNDLED CONTRACT.—The term “bundled contract” means a
4 contract that is entered into to meet requirements that are consolidated
5 in a bundling of contract requirements.

6 (13) BUNDLING OF CONTRACT REQUIREMENTS.—

7 (A) IN GENERAL.—The term “bundling of contract require-
8 ments” means consolidating 2 or more procurement requirements
9 for goods or services previously provided or performed under sepa-
10 rate smaller contracts into a solicitation of offers for a single con-
11 tract that is likely to be unsuitable for award to a small business
12 concern due to—

13 (i) the diversity, size, or specialized nature of the elements
14 of the performance specified;

15 (ii) the aggregate dollar value of the anticipated award;

16 (iii) the geographical dispersion of the contract perform-
17 ance sites; or

18 (iv) a combination of the factors described in clauses (i),
19 (ii), and (iii).

20 (B) SEPARATE SMALLER CONTRACT.—In subparagraph (A), the
21 term “separate smaller contract” means a contract that—

22 (i) has been performed by 1 or more small business con-
23 cerns; or

24 (ii) was suitable for award to 1 or more small business con-
25 cerns.

26 (14) BUSINESS DEVELOPMENT PROGRAM.—The term “business de-
27 velopment program” means the program under division F of subtitle
28 II.

29 (15) CERTIFIED DEVELOPMENT COMPANY PROGRAM.—The term
30 “certified development company program” means the program under
31 division D of subtitle III.

32 (16) COMPUTER CRIME.—The term “computer crime” means—

33 (A) a crime committed against a small business concern by
34 means of the use of a computer; and

35 (B) a crime involving the illegal use of, or tampering with, a
36 computer owned or utilized by a small business concern.

37 (17) CONTRACTING OFFICER.—The term “contracting officer” has
38 the meaning given the term in section 2101 of title 41.

39 (18) CREDIT ELSEWHERE.—The term “credit elsewhere”, with re-
40 spect to a concern or homeowner, means sufficient credit that is avail-
41 able from a non-Federal source on reasonable terms and conditions

1 taking into consideration the prevailing rates and terms in the commu-
2 nity in or near which the concern transacts business or the homeowner
3 resides, for similar purposes and periods of time.

4 (19) DEFENSE AGENCY.—The term “defense agency” has the mean-
5 ing given the term in section 101 of title 10.

6 (20) DISABLED INDIVIDUAL.—The term “disabled individual” means
7 an individual who—

8 (A) has a physical, mental, or emotional impairment, defect, ail-
9 ment, disease, or disability of a permanent nature that in any way
10 limits the selection of any type of employment for which the per-
11 son would otherwise be qualified or qualifiable; or

12 (B) is a service-disabled veteran.

13 (21) DISABLED VETERAN.—The term “disabled veteran” has the
14 meaning given the term in section 4211 of title 38.

15 (22) DISADVANTAGED OWNER.—The term “disadvantaged owner”
16 has the meaning given the term in section 231101 of this title.

17 (23) DISASTER.—

18 (A) IN GENERAL.—The term “disaster” means a sudden event
19 that causes severe damage.

20 (B) INCLUSIONS.—The term “disaster” includes a flood, hurri-
21 cane, tornado, earthquake, fire, explosion, volcano, windstorm,
22 landslide or mudslide, tidal wave, commercial fishery failure or
23 fishery resource disaster (as determined by the Secretary of Com-
24 merce under section 308(b) of the Interjurisdictional Fisheries Act
25 of 1986 (16 U.S.C. 4107(b))), ocean condition resulting in the clo-
26 sure of customary fishing water, riot, civil disorder, or other catas-
27 trophe.

28 (C) EXCLUSION.—The term “disaster” does not include an eco-
29 nomic dislocation.

30 (24) DISASTER AREA.—The term “disaster area” means an area af-
31 fected by a natural or other disaster, as determined for purposes of sec-
32 tion 221101 or 221102 of this title, during the period of the declara-
33 tion.

34 (25) DISASTER ASSISTANCE PROGRAM.—The term “disaster assist-
35 ance program” means—

36 (A) the disaster loan program;

37 (B) the private disaster assistance program;

38 (C) the immediate disaster assistance program; and

39 (D) the expedited disaster assistance business loan guarantee
40 program.

1 (26) DISASTER LOAN PROGRAM.—The term “disaster loan program”
2 means the program under chapter 221.

3 (27) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term
4 “economically disadvantaged Indian tribe” has the meaning given the
5 term in section 231101 of this title.

6 (28) ENERGY EFFICIENCY PROJECT.—The term “energy efficiency
7 project” means the installation or upgrading of equipment that results
8 in a significant reduction in energy usage.

9 (29) ENERGY MEASURE.—The term “energy measure” includes—

10 (A) solar thermal energy equipment that is—

11 (i) of the active type based on mechanically forced energy
12 transfer;

13 (ii) of the passive type based on convective, conductive, or
14 radiant energy transfer; or

15 (iii) a combination of the types described in clauses (i) and
16 (ii);

17 (B) photovoltaic cells and related equipment;

18 (C) a product or service—

19 (i) the primary purpose of which is conservation of energy
20 through a device or technique that increases the energy effi-
21 ciency of existing equipment, methods of operation, or sys-
22 tems that use fossil fuel; and

23 (ii) that is on the Energy Conservation Measures list of the
24 Secretary of Energy or that the Administrator determines to
25 be consistent with the intent of this paragraph;

26 (D) equipment the primary purpose of which is production of
27 energy from wood, biological waste, grain, or another biomass (as
28 defined by the Administrator) source of energy;

29 (E) equipment the primary purpose of which is industrial cogen-
30 eration of energy, district heating, or production of energy from
31 industrial waste;

32 (F) hydroelectric power equipment;

33 (G) wind energy conversion equipment; and

34 (H) an engineering, architectural, consulting, or other profes-
35 sional service that is necessary or appropriate to aid citizens in
36 using any of the measures described in subparagraphs (A) to (G).

37 (30) EXPEDITED DISASTER ASSISTANCE BUSINESS LOAN GUARAN-
38 TEE PROGRAM.—The term “expedited disaster assistance business loan
39 guarantee program” means the program under chapter 227.

40 (31) EXPORT ASSISTANCE CENTER.—The term “export assistance
41 center” means a 1-stop shop for United States exporters established by

1 the United States and Foreign Commercial Service of the Department
2 of Commerce pursuant to section 2301(b)(8) of the Omnibus Trade
3 and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)).

4 (32) EXPORT DEVELOPMENT ACTIVITY.—The term “export develop-
5 ment activity” includes—

6 (A) obtaining a standby letter of credit when required as a bid
7 bond, performance bond, or advance payment guarantee;

8 (B) participation in a trade show that takes place outside the
9 United States;

10 (C) translation of product brochures or catalogues for use in
11 markets outside the United States;

12 (D) obtaining a general line of credit for export purposes;

13 (E) performing a service contract from buyers located outside
14 the United States;

15 (F) obtaining transaction-specific financing associated with com-
16 pleting export orders;

17 (G) purchasing real estate or equipment to be used in the pro-
18 duction of a good or service for export;

19 (H) providing a term loan or other financing to enable a small
20 business concern, including an export trading company and an ex-
21 port management company, to develop a market outside the
22 United States; and

23 (I) acquiring, constructing, renovating, modernizing, improving,
24 or expanding a production facility or equipment to be used in the
25 United States in the production of a good or service for export.

26 (33) EXPORT EXPRESS PROGRAM.—The term “export express pro-
27 gram” means the program under section 205114 of this title.

28 (34) EXPORT FINANCE SPECIALIST.—The term “export finance spe-
29 cialist” means a full-time equivalent employee of the Office of Inter-
30 national Trade assigned to an export assistance center to carry out the
31 duties described in section 277105 of this title.

32 (35) EXPORT WORKING CAPITAL PROGRAM.—The term “export
33 working capital program” means the program established under section
34 205108 of this title.

35 (36) EXPRESS LENDER.—The term “express lender” means a lender
36 authorized by the Administrator to participate in the express loan pro-
37 gram.

38 (37) EXPRESS LOAN.—

39 (A) EXPORT EXPRESS PROGRAM.—For purposes of the export
40 express program, the term “express loan” means a loan in which
41 a lender uses to the maximum extent practicable the loan analyses,

1 procedures, and documentation of the lender to provide expedited
2 processing of a loan application.

3 (B) EXPRESS LOAN PROGRAM.—For purposes of the express
4 loan program, the term “express loan” means a loan made pursu-
5 ant to section 203120 of this title in which a lender utilizes to the
6 maximum extent practicable its own loan analyses, procedures,
7 and documentation.

8 (38) EXPRESS LOAN PROGRAM.—The term “express loan program”
9 means the program for express loans established by the Administrator
10 under section 7(a)(25)(B) of the Small Business Act (15 U.S.C.
11 636(a)(25)(B)) (as in existence on April 5, 2004), with a guarantee
12 rate of not more than 50 percent.

13 (39) EXTRAORDINARY DISASTER.—The term “extraordinary disas-
14 ter” means a major disaster that the Administrator declares to be an
15 extraordinary disaster under section 221108 of this title.

16 (40) EXTRAORDINARY DISASTER-RELATED SUBSTANTIAL ECONOMIC
17 INJURY.—The term “extraordinary disaster-related substantial eco-
18 nomic injury” means economic injury to a small business concern that
19 results in the inability of the small business concern to—

20 (A) meet its obligations as they mature;

21 (B) meet its ordinary and necessary operating expenses; or

22 (C) market, produce, or provide a product or service ordinarily
23 marketed, produced, or provided by the small business concern;

24 because the small business concern relies on materials from the ex-
25 traordinary disaster area or sells or markets in the extraordinary disas-
26 ter area.

27 (41) FAST PROGRAM.—The term “FAST program” means the pro-
28 gram under section 263305 of this title.

29 (42) FEDERAL AGENCY.—Except in subtitles III and IV:

30 (A) IN GENERAL.—The term “Federal agency” has the meaning
31 given the term “agency” in section 551 of title 5.

32 (B) EXCLUSION.—The term “Federal agency” does not in-
33 clude—

34 (i) the United States Postal Service; or

35 (ii) the Government Accountability Office.

36 (43) FLOOR PLAN FINANCING PROGRAM.—The term “floor plan fi-
37 nancing program” means the program under section 205115 of this
38 title.

39 (44) GENERAL BUSINESS LOAN PROGRAM.—The term “general busi-
40 ness loan program” means the program under division B of subtitle II.

1 (45) HEDGE FUND.—The term “hedge fund” has the meaning given
2 the term in section 13(h)(2) of the Bank Holding Company Act of
3 1956 (12 U.S.C. 1851(h)(2)).

4 (46) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term
5 “historically underutilized business zone” has the meaning given the
6 term in section 253101 of this title.

7 (47) HOMEOWNER.—The term “homeowner” includes an owner or
8 lessee of residential property (including personal property of the owner
9 or lessee of the residential property).

10 (48) HUBZONE.—The term “HUBZone” has the meaning given the
11 term in section 253101 of this title.

12 (49) HUBZONE PROGRAM.—The term “HUBZone program” means
13 the program under chapter 253.

14 (50) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone
15 small business concern” has the meaning given the term in section
16 253101 of this title.

17 (51) IMMEDIATE DISASTER ASSISTANCE PROGRAM.—The term “im-
18 mediate disaster assistance program” means the program under chap-
19 ter 225.

20 (52) INDIAN RESERVATION.—

21 (A) IN GENERAL.—The term “Indian reservation” has the
22 meaning given the term “Indian country” in section 1151 of title
23 18.

24 (B) EXCLUSIONS.—The term “Indian reservation” does not in-
25 clude—

26 (i) land located in a State in which an Indian tribe did not
27 exercise governmental jurisdiction on December 21, 2000, un-
28 less that Indian tribe is recognized after December 21, 2000,
29 by either an Act of Congress or pursuant to regulations of
30 the Secretary of the Interior for the administrative recogni-
31 tion that an Indian group exists as an Indian tribe (part 83
32 of title 25, Code of Federal Regulations); or

33 (ii) land taken into trust or acquired by an Indian tribe
34 after December 21, 2000, if the land—

35 (I) is not located within the external boundaries of an
36 Indian reservation or former reservation; or

37 (II) is not contiguous to the land held in trust or re-
38 stricted status on December 21, 2000.

39 (C) LAND IN OKLAHOMA.—With respect to land in the State of
40 Oklahoma, the term “Indian reservation” means land that—

21

1 (i) is within the jurisdictional areas of an Oklahoma Indian
2 tribe (as determined by the Secretary of the Interior); and

3 (ii) is recognized by the Secretary of the Interior as eligible
4 for trust land status under part 151 of title 25, Code of Fed-
5 eral Regulations (as in effect on December 21, 2000).

6 (53) MAJOR DISASTER.—The term “major disaster” has the mean-
7 ing given the term in section 102 of the Robert T. Stafford Disaster
8 Relief and Emergency Assistance Act (42 U.S.C. 5122).

9 (54) MAJOR DISASTER AREA.—The term “major disaster area”
10 means the area for which a major disaster is declared.

11 (55) MICROLOAN PROGRAM.—The term “microloan program” means
12 the program under chapter 213.

13 (56) MILITARY DEPARTMENT.—The term “military department” has
14 the meaning given the term in section 101 of title 10.

15 (57) MULTIPLE AWARD CONTRACT.—The term “multiple award con-
16 tract” means—

17 (A) a multiple award task order contract or delivery order con-
18 tract that is entered into under chapter 41 of title 41; and

19 (B) any other indefinite delivery, indefinite quantity contract
20 that is entered into by the head of a Federal agency with 2 or
21 more sources pursuant to the same solicitation.

22 (58) NATIVE HAWAIIAN ORGANIZATION.—The term “Native Hawai-
23 ian organization” means a community service organization serving Na-
24 tive Hawaiians in the State of Hawaii—

25 (A) that is a nonprofit corporation that has filed articles of in-
26 corporation with the director of the Hawaii Department of Com-
27 merce and Consumer Affairs, or any successor agency;

28 (B) that is controlled by Native Hawaiians; and

29 (C) the business activities of which will principally benefit Na-
30 tive Hawaiians in the State of Hawaii.

31 (59) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—The
32 term “new markets venture capital company program” means the pro-
33 gram under chapter 305.

34 (60) NON-FEDERALLY REGULATED LENDER.—The term “non-feder-
35 ally regulated lender” means a business concern (other than a small
36 business lending company)—

37 (A) that is authorized by the Administrator to make loans
38 under the general business loan program;

39 (B) that is subject to regulation by a State; and

40 (C) the lending activities of which are not regulated by any Fed-
41 eral banking authority.

22

1 (61) PREFERRED LENDER.—The term “preferred lender” means a
2 lender participating in the preferred lenders program.

3 (62) PREFERRED LENDERS PROGRAM.—The term “preferred lenders
4 program” means the preferred lenders program carried out under sec-
5 tion 103202(f)(3) of this title.

6 (63) PREMIER CERTIFIED LENDERS PROGRAM.—The term “premier
7 certified lenders program” means the program under section 331108
8 of this title.

9 (64) PRIME PROGRAM.—The term “PRIME program” means the
10 program under chapter 401.

11 (65) PRIVATE DISASTER ASSISTANCE PROGRAM.—The term “private
12 disaster assistance program” means the program under chapter 223.

13 (66) PRIVATE EQUITY FIRM.—The term “private equity firm” has
14 the meaning given the term “private equity fund” in section 13(h)(2)
15 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

16 (67) PROCURING AGENCY.—The term “procuring agency” means a
17 Federal agency that has procurement power.

18 (68) PUBLIC OR PRIVATE ORGANIZATION FOR THE DISABLED.—The
19 term “public or private organization for the disabled” means an organi-
20 zation—

21 (A) that is organized under the laws of the United States or of
22 a State;

23 (B) that is operated in the interest of disabled individuals;

24 (C) the net income of which does not inure in whole or in part
25 to the benefit of any shareholder or other individual;

26 (D) that complies with any applicable occupational health and
27 safety standard prescribed by the Secretary of Labor; and

28 (E) that, in the production of commodities and in the provision
29 of services during any fiscal year in which the organization re-
30 ceived financial assistance under the general business loan pro-
31 gram, employs disabled individuals for not less than 75 percent of
32 the man-hours required for the production or provision of the com-
33 modities or services.

34 (69) QUALIFIED CENSUS TRACT.—The term “qualified census tract”
35 has the meaning given the term in section 42(d)(5)(B)(ii)(I) of the In-
36 ternal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(B)(ii)(I)).

37 (70) QUALIFIED EMPLOYEE TRUST.—The term “qualified employee
38 trust” has the meaning given the term in section 205109(a) of this
39 title.

23

1 (71) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term
2 “qualified HUBZone small business concern” has the meaning given
3 the term in section 253101 of this title.

4 (72) QUALIFIED INDIAN TRIBE.—The term “qualified Indian tribe”
5 means an Indian tribe (as defined in section 4 of the Indian Self-Deter-
6 mination and Education Assistance Act (25 U.S.C. 450b)) that owns
7 and controls 100 percent of a small business concern.

8 (73) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified
9 nonmetropolitan county” has the meaning given the term in section
10 253101 of this title.

11 (74) REDESIGNATED AREA.—The term “redesignated area” has the
12 meaning given the term in section 253101 of this title.

13 (75) RENEWABLE ENERGY SYSTEM.—The term “renewable energy
14 system” means a system of energy derived from—

15 (A) a wind, solar, biomass (including biodiesel), or geothermal
16 source; or

17 (B) hydrogen derived from biomass or water using an energy
18 source described in subparagraph (A).

19 (76) RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM.—
20 The term “renewable fuel capital investment pilot program” means the
21 program under chapter 307.

22 (77) RESERVIST.—The term “reservist” means a member of a re-
23 serve component of the Armed Forces, as described in section 10101
24 of title 10.

25 (78) SBA.—The term “SBA” means the Small Business Adminis-
26 tration.

27 (79) SBA DISTRICT.—The term “SBA district” means a part of an
28 SBA region designated by the Administrator as a district.

29 (80) SBA DISTRICT OFFICE.—The term “SBA district office” means
30 a district office of SBA established under section 103101(e) of this
31 title.

32 (81) SBA REGION.—The term “SBA region” means a geographic re-
33 gion served by an SBA regional office.

34 (82) SBA REGIONAL OFFICE.—The term “SBA regional office”
35 means a regional office of SBA established under section 103101(e) of
36 this title.

37 (83) SBIR AGENCY.—The term “SBIR agency” has the meaning
38 given the term in section 261101 of this title.

39 (84) SBIR PROGRAM.—The term “SBIR program” has the meaning
40 given the term in section 261101 of this title.

24

1 (85) SCORE.—The term “SCORE” means a service corps of retired
2 executives established under section 241103(b) of this title.

3 (86) SERVICE-DISABLED VETERAN.—The term “service-disabled vet-
4 eran” means a veteran with a disability that is service-connected (as
5 defined in section 101 of title 38).

6 (87) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified
7 acquisition threshold” has the meaning given the term in section 134
8 of title 41.

9 (88) SMALL AGRICULTURAL COOPERATIVE.—

10 (A) IN GENERAL.—The term “small agricultural cooperative”
11 means an association (corporate or otherwise) acting pursuant to
12 the Agricultural Marketing Act (12 U.S.C. 1141 et seq.) the size
13 of which does not exceed the size standard established by the Ad-
14 ministrator for other similar agricultural small business concerns.

15 (B) SIZE DETERMINATION.—In determining the size of an asso-
16 ciation described in subparagraph (A), the Administrator—

17 (i) shall regard the association as a business concern; and

18 (ii) shall not include the income or employees of any mem-
19 ber shareholder of the association.

20 (89) SMALL BUSINESS CONCERN.—The term “small business con-
21 cern” has the meaning given the term under section 101103 of this
22 title.

23 (90) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY
24 SERVICE-DISABLED VETERANS.—The term “small business concern
25 owned and controlled by service-disabled veterans” means a small busi-
26 ness concern—

27 (A) not less than 51 percent of which is owned by 1 or more
28 service-disabled veterans; and

29 (B) the management and daily business operations of which are
30 controlled by—

31 (i) 1 or more service-disabled veterans; or

32 (ii) in the case of a veteran with permanent and severe dis-
33 ability, the spouse or permanent caregiver of the veteran.

34 (91) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-
35 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term
36 “small business concern owned and controlled by socially and economi-
37 cally disadvantaged individuals” has the meaning given the term in sec-
38 tion 231101 of this title.

39 (92) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VET-
40 ERANS.—The term “small business concern owned and controlled by
41 veterans” means a small business concern—

1 (A) not less than 51 percent of which is owned by 1 or more
2 veterans; and

3 (B) the management and daily business operations of which are
4 controlled by 1 or more veterans.

5 (93) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY
6 WOMEN.—The term “small business concern owned and controlled by
7 women” means a small business concern—

8 (A) at least 51 percent of which is owned by 1 or more women;
9 and

10 (B) the management and daily business operations of the busi-
11 ness of which are controlled by 1 or more women.

12 (94) SMALL BUSINESS DEVELOPMENT CENTER.—The term “small
13 business development center” means a small business development cen-
14 ter that receives financial assistance under chapter 271.

15 (95) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—The term
16 “small business development center program” means the small business
17 development center program under chapter 271.

18 (96) SMALL BUSINESS INVESTMENT COMPANY PROGRAM.—The term
19 “small business investment company program” means the program
20 under chapter 303.

21 (97) SMALL BUSINESS LENDING COMPANY.—The term “small busi-
22 ness lending company” means a business concern—

23 (A) that is authorized by the Administrator to make loans
24 under the general business loan program; and

25 (B) the lending activities of which are not subject to regulation
26 by any Federal or State regulatory agency.

27 (98) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—
28 The term “socially and economically disadvantaged individual” has the
29 meaning given the term in section 231101 of this title.

30 (99) SOCIALLY DISADVANTAGED INDIVIDUAL.—The term “socially
31 disadvantaged individual” has the meaning given the term in section
32 231101 of this title.

33 (100) STTR AGENCY.—The term “STTR agency” has the meaning
34 given the term in section 261101 of this title.

35 (101) STTR PROGRAM.—The term “STTR program” has the mean-
36 ing given the term in section 261101 of this title.

37 (102) SURETY BOND GUARANTEE PROGRAM.—The term “surety
38 bond guarantee program” means the program under chapter 321.

39 (103) UNITED STATES.—The term “United States” includes the
40 States, the District of Columbia, Puerto Rico, and any other territory
41 (including a possession) of the United States.

1 (104) VENTURE CAPITAL OPERATING COMPANY.—The term “venture
2 capital operating company” means an entity described in clause (i), (v),
3 or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations
4 (or any successor regulation).

5 (105) VETERAN.—The term “veteran” has the meaning given the
6 term in section 101 of title 38.

7 (106) WOMEN’S BUSINESS CENTER.—The term “women’s business
8 center” means a women’s business center operating under chapter 273.

9 (107) WOMEN’S BUSINESS CENTER PROGRAM.—The term “women’s
10 business center program” means the women’s business center program
11 under chapter 273.

12 **§ 101103. Small business concerns**

13 (a) IN GENERAL.—In this title, the term “small business concern” means
14 a business concern (including an agricultural enterprise) that—

15 (1) is independently owned and operated; and

16 (2) is not dominant in its field of operation.

17 (b) INCLUSIONS.—Notwithstanding any other provision of law, an agricul-
18 tural enterprise that has annual receipts (including receipts of its affiliates)
19 not in excess of \$750,000 shall be deemed to be a small business concern.

20 (c) SIZE STANDARDS.—

21 (1) IN GENERAL.—In addition to the criteria specified in subsection
22 (a), the Administrator may specify detailed definitions or standards by
23 which a business concern may be determined to be a small business
24 concern for the purposes of this title or any other law.

25 (2) ADDITIONAL CRITERIA.—The standards described in paragraph
26 (1) may use—

27 (A) number of employees, dollar volume of business, net worth,
28 net income, or a combination thereof; or

29 (B) other appropriate factors.

30 (3) REQUIREMENTS FOR PRESCRIPTION OF SIZE STANDARD.—Unless
31 specifically authorized by statute, no Federal agency may prescribe a
32 size standard for categorizing a business concern as a small business
33 concern unless the proposed size standard—

34 (A) is proposed after an opportunity for public notice and com-
35 ment;

36 (B) provides for determining—

37 (i) the size of a manufacturing concern as measured by the
38 manufacturing concern’s average employment based on em-
39 ployment during each of the manufacturing concern’s pay pe-
40 riods for the preceding 12 months;

1 (ii) the size of a business concern providing services on the
2 basis of the annual average gross receipts of the business con-
3 cern over a period of not less than 3 years;

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

6 (iv) other appropriate factors; and

7 (C) is approved by the Administrator.

8 (4) VARIATION BY INDUSTRY; CONSIDERATION OF OTHER FAC-
9 TORS.—In establishing or approving a size standard under this sub-
10 section, the Administrator shall—

11 (A) ensure that the size standard varies from industry to indus-
12 try to the extent necessary to reflect the differing characteristics
13 of the various industries; and

14 (B) consider other factors that the Administrator considers to
15 be relevant.

16 (5) ALTERNATIVE SIZE STANDARDS.—

17 (A) IN GENERAL.—The Administrator shall establish an alter-
18 native size standard for applicants for business loans under the
19 general business loan program and applicants for development
20 company loans under the certified development company program.

21 (B) USE OF MAXIMUM TANGIBLE NET WORTH AND AVERAGE
22 NET INCOME.—The alternative size standard under subparagraph
23 (A) shall use maximum tangible net worth and average net income
24 as an alternative to the use of industry standards.

25 (6) PROPOSED RULEMAKING.—In conducting rulemaking to revise,
26 modify, or establish a size standard under this section, the Adminis-
27 trator shall consider, address, and make publicly available as part of
28 the notice of proposed rulemaking and notice of final rule—

29 (A) a detailed description of the industry for which the new size
30 standard is proposed;

31 (B) an analysis of the competitive environment for that indus-
32 try;

33 (C) the approach that the Administrator used to develop the
34 proposed standard, including the source of all data used to develop
35 the proposed rulemaking; and

36 (D) the anticipated effect of the proposed rulemaking on the in-
37 dustry, including—

38 (i) the number of concerns that do not currently qualify as
39 a small business concern that would qualify as a small busi-
40 ness concern under the proposed rulemaking; and

1 (ii) the number of concerns that currently qualify as a
2 small business concern that would not qualify as a small busi-
3 ness concern under the proposed rulemaking.

4 (7) COMMON SIZE STANDARDS.—In carrying out this subsection, the
5 Administrator may establish or approve a single size standard for a
6 grouping of 4-digit North American Industry Classification System
7 codes only if the Administrator makes publicly available, not later than
8 the date on which the size standard is established or approved, a jus-
9 tification demonstrating that the size standard is appropriate for each
10 individual industry classification included in the grouping.

11 (8) NUMBER OF SIZE STANDARDS.—The Administrator shall not
12 limit the number of size standards established under this subsection,
13 but shall assign the appropriate size standard to each North American
14 Industry Classification System code.

15 (9) LISTING OF ADDITIONAL SIZE STANDARDS.—The Administrator
16 shall prescribe regulations to carry out this subsection. The regulations
17 shall include a listing of all small business size standards prescribed by
18 statute or by individual Federal agencies, identifying the programs or
19 purposes to which the size standards apply.

20 (10) UPDATED SIZE STANDARDS.—

21 (A) ROLLING REVIEW.—

22 (i) IN GENERAL.—The Administrator shall—

23 (I) during every 18-month period, conduct a detailed
24 review of not less than $\frac{1}{3}$ of the size standards for small
25 business concerns established under this subsection,
26 which shall include holding not less than 2 public forums
27 located in different geographic regions of the United
28 States;

29 (II) after completing a review under subclause (I)
30 make appropriate adjustments to the size standards to
31 reflect market conditions;

32 (III) make publicly available—

33 (aa) information regarding the factors evaluated
34 as part of each review conducted under subclause
35 (I); and

36 (bb) information regarding the criteria used for
37 any revised size standards promulgated under sub-
38 clause (II); and

39 (IV) not later than 30 days after the date on which
40 the Administrator completes a review under subclause
41 (I), submit to the Committee on Small Business and En-

1 trepreneurship of the Senate and the Committee on
2 Small Business of the House of Representatives and
3 make publicly available a report regarding the review, in-
4 cluding why the Administrator—

5 (aa) used the factors and criteria described in
6 subclause (III); and

7 (bb) adjusted or did not adjust any size standard
8 that was reviewed.

9 (ii) COMPLETE REVIEW OF SIZE STANDARDS.—The Admin-
10 istrator shall ensure that each size standard for small busi-
11 ness concerns established under this subsection is reviewed
12 under clause (i) not less frequently than once every 5 years.

13 (B) REGULATIONS.—The Administrator shall promulgate regu-
14 lations for conducting the reviews required under subparagraph
15 (A).

16 (d) SIZE AND STATUS INTEGRITY.—

17 (1) RECOVERY OF LOSS FROM MISREPRESENTATION.—

18 (A) IN GENERAL.—In a case in which it is established that a
19 business concern other than a small business concern, by misrepre-
20 sentation concerning the small business size and status of the
21 business concern, willfully sought and received an award of a con-
22 tract, subcontract, cooperative agreement, cooperative research
23 and development agreement, or grant that was set aside, reserved,
24 or otherwise classified as intended for award to small business
25 concerns, the United States, in addition to any other remedy avail-
26 able to the United States, shall recover from the business concern
27 the amount that is equal to the amount expended by the United
28 States on the contract, subcontract, cooperative agreement, coop-
29 erative research and development agreement, or grant.

30 (B) DEEMED CERTIFICATIONS.—The following actions shall be
31 deemed affirmative, willful, and intentional certifications of small
32 business size and status:

33 (i) Submission of a bid or proposal for a Federal contract,
34 subcontract, cooperative agreement, cooperative research and
35 development agreement, or grant that is reserved, set aside,
36 or otherwise classified as intended for award to, small busi-
37 ness concerns.

38 (ii) Submission of a bid or proposal for a Federal contract,
39 subcontract, cooperative agreement, cooperative research and
40 development agreement reserved, or grant that in any way en-

1 courages a Federal agency to classify the bid or proposal, if
2 awarded, as an award to a small business concern.

3 (iii) Registration on a Federal electronic database for the
4 purpose of being considered for award of a Federal contract,
5 subcontract, cooperative agreement, cooperative research and
6 development agreement, or grant as a small business concern.

7 (C) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFI-
8 CIAL.—

9 (i) IN GENERAL.—A solicitation, bid, or application for a
10 Federal contract, subcontract, or grant shall contain a certifi-
11 cation concerning the small business size and status of a busi-
12 ness concern seeking the Federal contract, subcontract, or
13 grant.

14 (ii) CONTENT OF CERTIFICATION.—A certification that a
15 business concern qualifies as a small business concern of the
16 exact size and status claimed by the business concern for pur-
17 poses of bidding on a Federal contract or subcontract, or ap-
18 plying for a Federal grant, shall contain the signature of an
19 authorized official on the same page on which the certification
20 is contained.

21 (D) REGULATIONS.—The Administrator shall promulgate regu-
22 lations to provide adequate protections to individuals and business
23 concerns from liability under this paragraph in cases of uninten-
24 tional errors, technical malfunctions, and other similar situations.

25 (2) ANNUAL CERTIFICATION.—

26 (A) IN GENERAL.—A business certified as a small business con-
27 cern under this title and subtitle II shall annually certify its small
28 business size and, if appropriate, its small business status, by
29 means of a confirming entry on SBA's Online Representations and
30 Certifications Application database, or any successor to the data-
31 base.

32 (B) REGULATIONS.—The Administrator, in consultation with
33 the Inspector General and the Chief Counsel for Advocacy of SBA,
34 shall promulgate regulations to ensure that—

35 (i) no business concern continues to be certified as a small
36 business concern on SBA's Online Representations and Cer-
37 tifications Application database, or any successor to the data-
38 base, without fulfilling the requirements for annual certifi-
39 cation under this paragraph; and

1 (ii) the requirements of this paragraph are implemented in
2 a manner presenting the least possible regulatory burden on
3 small business concerns.

4 (3) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND
5 STATUS FRAUD.—The Administrator, in consultation with the Attorney
6 General, shall issue a Governmentwide policy on prosecution of small
7 business size and status fraud, which shall direct Federal agencies to
8 appropriately publicize the policy.

9 (e) COMPLIANCE GUIDE.—Pursuant to section 212(a) of the Small Busi-
10 ness Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note,
11 Public Law 104–121), the Administrator shall issue a compliance guide to
12 assist business concerns in accurately determining their status as a small
13 business concern.

14 **Chapter 103—Small Business** 15 **Administration**

Subchapter I—Organization

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16 **Subchapter I—Organization**

17 **§ 103101. Establishment**

18 (a) IN GENERAL.—There is established to carry out the authorities com-
19 mitted to the Administrator under this title and other law an agency to be
20 known as the Small Business Administration.

1 (b) INDEPENDENT ESTABLISHMENT.—SBA shall be under the general di-
2 rection and supervision of the President and shall not be affiliated with or
3 be within any other Federal agency.

4 (c) OFFICES.—SBA's principal office shall be located in the District of
5 Columbia. The Administrator may establish such regional, district, and
6 branch offices in other places in the United States as the Administrator
7 may determine.

8 **§ 103102. Administrator**

9 (a) IN GENERAL.—The management of SBA shall be vested in an Admin-
10 istrator who shall be appointed from civilian life by the President, by and
11 with the advice and consent of the Senate, and who shall be a person of
12 outstanding qualifications known to be familiar and sympathetic with small
13 business needs and problems.

14 (b) FULL-TIME POSITION.—The Administrator shall not engage in any
15 business, vocation, or employment other than that of serving as Adminis-
16 trator.

17 **§ 103103. Deputy Administrator**

18 (a) IN GENERAL.—The President may appoint a Deputy Administrator
19 of SBA, by and with the advice and consent of the Senate.

20 (b) DUTIES.—The Deputy Administrator shall be Acting Administrator of
21 SBA during the absence or disability of the Administrator or in the event
22 of a vacancy in the office of Administrator.

23 **§ 103104. Associate Administrators**

24 (a) IN GENERAL.—The Administrator may appoint Associate Administra-
25 tors (including the Associate Administrator specified in section 103106 of
26 this title) to assist in the execution of the functions vested in the Adminis-
27 trator.

28 (b) ASSOCIATE ADMINISTRATOR FOR VETERANS BUSINESS DEVELOP-
29 MENT.—

30 (1) IN GENERAL.—One Associate Administrator appointed under
31 subsection (a) shall be the Associate Administrator for Veterans Busi-
32 ness Development.

33 (2) POSITION.—The Associate Administrator for Veterans Business
34 Development shall be an appointee in the Senior Executive Service.

35 (3) REPORTING.—The Associate Administrator for Veterans Busi-
36 ness Development shall report to and be responsible directly to the Ad-
37 ministrator.

38 (4) DUTIES.—The Associate Administrator for Veterans Business
39 Development shall administer the Office of Veterans Business Develop-
40 ment established under section 103113 of this title.

1 (c) ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND
2 CAPITAL OWNERSHIP DEVELOPMENT.—

3 (1) IN GENERAL.—One of the Associate Administrators shall be des-
4 ignated at the time of appointment as the Associate Administrator for
5 Minority Small Business and Capital Ownership Development.

6 (2) POSITION.—The Associate Administrator for Minority Small
7 Business and Capital Ownership Development shall be an employee in
8 the competitive service or a career appointee in the Senior Executive
9 Service, and the position of Associate Administrator for Minority Small
10 Business and Capital Ownership Development shall be a career re-
11 served position.

12 (3) DUTIES.—

13 (A) FORMULATION AND COORDINATION OF POLICIES.—The As-
14 sociate Administrator for Minority Small Business and Capital
15 Ownership Development shall be responsible for formulating and
16 coordinating policies relating to Federal assistance to small busi-
17 ness concerns eligible for assistance under section 205104 of this
18 title and small business concerns eligible to receive contracts under
19 the business development program.

20 (B) BUSINESS DEVELOPMENT PROGRAM.—The Associate Ad-
21 ministrator for Minority Small Business and Capital Ownership
22 Development shall be responsible to the Administrator for the for-
23 mulation, execution, and management of the business development
24 program (including the making of determinations under para-
25 graphs (8), (15), (16), and (17) of section 231101 of this title and
26 sections 233110, 233112(a)(1), and 233118(g) of this title), under
27 the supervision of the Administrator.

28 (d) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT
29 CENTERS.—

30 (1) APPOINTMENT AND COMPENSATION.—The Administrator shall
31 appoint an Associate Administrator for Small Business Development
32 Centers who shall—

33 (A) report to an official who is not more than 1 level below the
34 Office of the Administrator; and

35 (B) serve without regard to the provisions of title 5 governing
36 appointments in the competitive service, and without regard to
37 chapter 51 and subchapter III of chapter 53 of that title relating
38 to classification and General Schedule pay rates, but at a rate not
39 less than the rate of pay for a position classified above GS-15
40 pursuant to section 5108 of title 5.

41 (2) DUTIES.—

1 (A) IN GENERAL.—The sole responsibility of the Associate Ad-
2 ministrator for Small Business Development Centers shall be to
3 administer the small business development center program.

4 (B) DUTIES INCLUDED.—Duties of the position shall include—

5 (i) recommending the annual budget for the small business
6 development center program;

7 (ii) reviewing the annual budgets submitted by each appli-
8 cant under the small business development center program;

9 (iii) establishing appropriate funding levels for applicants
10 under the small business development center program;

11 (iv) selecting applicants to participate in the small business
12 development center program;

13 (v) implementing chapter 271;

14 (vi) maintaining a clearinghouse to provide for the dissemi-
15 nation and exchange of information between small business
16 development centers; and

17 (vii) conducting audits of recipients of grants under chap-
18 ter 241.

19 (3) CONSULTATION.—

20 (A) IN GENERAL.—In carrying out the duties described in this
21 subsection, the Associate Administrator for Small Business Devel-
22 opment Centers shall confer with and seek the advice of the Na-
23 tional Small Business Development Center Advisory Board and
24 SBA officials in areas served by the small business development
25 centers.

26 (B) RESPONSIBILITY.—Notwithstanding subparagraph (A), the
27 Associate Administrator shall be responsible for the management
28 and administration of the program and shall not be subject to the
29 approval or concurrence of SBA officials described in subpara-
30 graph (A).

31 (e) ASSOCIATE ADMINISTRATOR FOR INTERNATIONAL TRADE.—One of
32 the Associate Administrators shall be the Associate Administrator for Inter-
33 national Trade, who shall be the head of the Office of International Trade
34 established under section 103109 of this title.

35 **§ 103105. Personnel**

36 (a) IN GENERAL.—The Administrator may, subject to the civil service
37 and classification laws—

38 (1) select, employ, appoint, and fix the compensation of such officers,
39 employees, attorneys, and agents as are necessary to carry out this
40 title;

41 (2) define their authority and duties; and

1 (3) pay the costs of qualification of certain of them as notaries pub-
2 lic.

3 (b) INDIVIDUALS EMPLOYED TO RENDER TEMPORARY SERVICES IN
4 CONNECTION WITH A DISASTER.—

5 (1) IN GENERAL.—The Administrator may pay the transportation
6 expenses and per diem in lieu of subsistence expenses, in accordance
7 with subchapter I of chapter 57 of title 5, for travel of any individual
8 employed by SBA to render temporary services not in excess of 6
9 months in connection with a disaster from place of appointment to, and
10 while at, the disaster area and any other temporary posts of duty and
11 return on completion of the assignment.

12 (2) EXTENSION OF TERM.—The Administrator may extend the six-
13 month limitation under paragraph (1) for an additional 6 months if the
14 Administrator determines that the extension is necessary to continue
15 efficient disaster loan making activities.

16 (c) EXPERTS AND CONSULTANTS.—

17 (1) IN GENERAL.—To such extent as the Administrator finds nec-
18 essary to carry out this title, the Administrator may procure the tem-
19 porary (not in excess of 1 year) or intermittent services of experts or
20 consultants (including stenographic reporting services) by contract or
21 appointment.

22 (2) INAPPLICABILITY OF OTHER LAW.—Service procured under para-
23 graph (1)—

24 (A) shall be without regard to the civil service and classification
25 laws; and

26 (B) except in the case of stenographic reporting services by an
27 organization, shall be without regard to section 6101 of title 41.

28 (3) COMPENSATION.—An individual employed under paragraph
29 (1)—

30 (A) may be compensated at a rate not in excess of the daily
31 equivalent of the maximum rate payable under section 5376 of
32 title 5, including travel time; and

33 (B) while away from the individual's home or regular place of
34 business, may be allowed travel expenses (including per diem in
35 lieu of subsistence) as authorized by section 5703 of title 5.

36 **§ 103106. Small Business Investment Division**

37 (a) ESTABLISHMENT OF DIVISION.—There is established in SBA a divi-
38 sion to be known as the Small Business Investment Division.

39 (b) ASSOCIATE ADMINISTRATOR.—The Small Business Investment Divi-
40 sion shall be headed by an Associate Administrator appointed by the Admin-
41 istrator.

1 (e) COMPENSATION.—The Associate Administrator shall receive com-
2 pensation at the rate provided by law for other SBA Associate Administra-
3 tors.

4 **§ 103107. Office of Advocacy**

5 (a) DEFINITIONS.—In this section:

6 (1) CHIEF COUNSEL.—The term “Chief Counsel” means the Chief
7 Counsel for Advocacy appointed under subsection (c).

8 (2) OFFICE.—The term “Office” means the Office of Advocacy es-
9 tablished by subsection (b).

10 (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office
11 of Advocacy.

12 (c) CHIEF COUNSEL FOR ADVOCACY.—The management of the Office
13 shall be vested in a Chief Counsel for Advocacy, who shall be appointed
14 from civilian life by the President, by and with the advice and consent of
15 the Senate.

16 (d) PRIMARY FUNCTIONS.—The primary functions of the Chief Counsel
17 shall be to—

18 (1) examine the role of small business in the American economy and
19 the contribution that small business can make in improving competi-
20 tion, encouraging economic and social mobility for all citizens, restrain-
21 ing inflation, spurring production, expanding employment opportuni-
22 ties, increasing productivity, promoting exports, stimulating innovation
23 and entrepreneurship, and providing an avenue through which new and
24 untested products and services can be brought to the marketplace;

25 (2) assess the effectiveness of Federal subsidy and assistance pro-
26 grams for small business and the desirability of reducing the emphasis
27 on such programs and increasing the emphasis on general assistance
28 programs designed to benefit all small business concerns;

29 (3)(A) measure the direct costs and other effects of government reg-
30 ulation on small business concerns; and

31 (B) make legislative and nonlegislative proposals for eliminating ex-
32 cessive or unnecessary regulation of small business concerns;

33 (4) determine the impact of the tax structure on small business con-
34 cerns and make legislative and other proposals for altering the tax
35 structure to enable all small business concerns to realize their potential
36 for contributing to the improvement of the Nation’s economic well-
37 being;

38 (5) study the ability of financial markets and institutions to meet
39 small business credit needs and determine the impact of government
40 demands for credit on small business concerns;

1 (6) determine financial resource availability and recommend methods
2 for delivery of financial assistance to minority enterprises, including
3 methods for—

4 (A) securing equity capital;

5 (B) generating markets for goods and services;

6 (C) providing effective business education, more effective man-
7 agement and technical assistance, and training; and

8 (D) providing assistance in complying with Federal, State, and
9 local law;

10 (7) evaluate the efforts of Federal agencies, business, and industry
11 to assist minority business concerns;

12 (8) make such recommendations as may be appropriate to assist the
13 development and strengthening of minority and other small business
14 concerns;

15 (9)(A) recommend specific measures for creating an environment in
16 which all businesses will have the opportunity to compete effectively
17 and expand to their full potential; and

18 (B) ascertain the common reasons, if any, for small business suc-
19 cesses and failures;

20 (10)(A) determine the desirability of developing a set of rational, ob-
21 jective criteria to be used to define small business; and

22 (B) develop such criteria, if appropriate; and

23 (11)(A) evaluate the efforts of each Federal agency, and of private
24 industry, to assist small business concerns owned and controlled by vet-
25 erans and small business concerns owned and controlled by service-dis-
26 abled veterans;

27 (B) provide statistical information on the use of such programs by
28 small business concerns owned and controlled by veterans and small
29 business concerns owned and controlled by service-disabled veterans;
30 and

31 (C) make appropriate recommendations to the Administrator and to
32 Congress to promote the establishment and growth of small business
33 concerns owned and controlled by veterans and small business concerns
34 owned and controlled by service-disabled veterans.

35 (e) DUTIES TO BE PERFORMED ON A CONTINUING BASIS.—

36 (1) IN GENERAL.—The Chief Counsel shall perform the duties de-
37 scribed in this subsection on a continuing basis.

38 (2) COMPLAINTS, CRITICISMS, AND SUGGESTIONS.—The Chief Coun-
39 sel shall serve as a focal point for the receipt of complaints, criticisms,
40 and suggestions concerning the policies and activities of SBA and any
41 other Federal agency that affects small business concerns.

1 (3) COUNSELING.—The Chief Counsel shall counsel small business
2 concerns on how to resolve questions and problems concerning the rela-
3 tionship of the small business to the Federal Government.

4 (4) PROPOSALS FOR CHANGE.—The Chief Counsel shall—

5 (A) develop proposals for changes in the policies and activities
6 of any Federal agency that will better fulfill the purposes of this
7 subtitle and subtitle II; and

8 (B) communicate the proposals to the appropriate Federal agen-
9 cies.

10 (5) REPRESENTATION OF VIEWS AND INTERESTS.—The Chief Coun-
11 sel shall represent the views and interests of small business concerns
12 before other Federal agencies the policies and activities of which may
13 affect small business.

14 (6) DISSEMINATION OF INFORMATION.—The Chief Counsel shall en-
15 list the cooperation and assistance of public and private agencies, busi-
16 nesses, and other organizations in disseminating—

17 (A) information about the programs and services provided by
18 the Federal Government that are of benefit to small business con-
19 cerns; and

20 (B) information on how small business concerns can participate
21 in or make use of those programs and services.

22 (7) REGULATORY ANALYSIS.—The Chief Counsel shall carry out the
23 responsibilities of the Office under chapter 6 of title 5.

24 (f) RURAL TOURISM TRAINING PROGRAM.—In conjunction with the Of-
25 fice of Rural Affairs and appropriate personnel designated by each SBA dis-
26 trict office, the Chief Counsel shall conduct training sessions on the types
27 of Federal assistance available for the development of rural small business
28 concerns engaged in tourism and tourism-related activities.

29 (g) POWERS.—In carrying out this section, the Chief Counsel may—

30 (1) employ and fix the compensation of such additional staff person-
31 nel as the Chief Counsel considers necessary, without regard to the pro-
32 visions of title 5, governing appointments in the competitive service,
33 and without regard to chapter 51 or subchapter III of chapter 53 of
34 that title relating to classification and General Schedule pay rates but
35 at rates not in excess of the lowest rate for GS-15 of the General
36 Schedule, except that not more than 14 staff personnel at any 1 time
37 may be employed and compensated at a rate not in excess of GS-15,
38 step 10, of the General Schedule;

39 (2) procure temporary and intermittent services to the same extent
40 as is authorized by section 3109 of title 5;

41 (3) consult—

1 (A) with experts and authorities in the fields of small business
2 investment, venture capital, and investment and commercial bank-
3 ing and with other comparable lending institutions involved in the
4 financing of business;

5 (B) with individuals with regulatory, legal, economic, or finan-
6 cial expertise, including members of the academic community; and

7 (C) with individuals who generally represent the public interest;

8 (4)(A) use the services of the National Advisory Council established
9 under section 103115 of this title; and

10 (B) in accordance with that section, appoint such other advisory
11 boards or committees as the Chief Counsel considers reasonably appro-
12 priate and necessary to carry out this section; and

13 (5) hold hearings and sit and act at such times and places as the
14 Chief Counsel considers advisable.

15 (h) ASSISTANCE OF FEDERAL AGENCIES.—Each Federal agency shall
16 furnish the Chief Counsel such reports and other information as the Chief
17 Counsel considers necessary to carry out this section.

18 (i) ADMINISTRATIVE OPERATIONS.—The Administrator shall—

19 (1) provide the Office with appropriate and adequate office space at
20 central office and field office locations, together with such equipment,
21 operating budget, and communications facilities and services as are
22 necessary; and

23 (2) provide necessary maintenance services for the central office and
24 field offices and the equipment and facilities located in the offices.

25 (j) REPORTS.—The Chief Counsel may from time to time prepare and
26 publish such reports as the Chief Counsel considers appropriate.

27 **§ 103108. Division of Program Certification and Eligibility**

28 (a) DEFINITIONS.—In this section:

29 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-
30 trator” means the Associate Administrator for Minority Small Business
31 and Capital Ownership Development.

32 (2) DIRECTOR.—The term “Director” means the Director of the Di-
33 vision.

34 (3) DIVISION.—The term “Division” means the Division of Program
35 Certification and Eligibility established by subsection (b).

36 (b) ESTABLISHMENT OF DIVISION.—There is established, in the Office of
37 Minority Small Business and Capital Ownership Development, the Division
38 of Program Certification and Eligibility.

39 (c) DIRECTOR.—The Division shall be headed by a Director, who shall
40 report directly to the Associate Administrator.

1 (d) FIELD OFFICES.—The Director shall establish field offices within
2 such SBA regional offices as are necessary to perform efficiently the func-
3 tions and responsibilities of the Director.

4 (e) DUTIES.—The duties of the Director are—

5 (1) to receive, review, and evaluate applications for certification
6 under the business development program;

7 (2) to advise a business development program applicant within 15
8 days after receipt of an application whether the application is complete
9 and suitable for evaluation and, if not, what matters must be rectified;

10 (3) to make recommendations on such applications to the Associate
11 Administrator;

12 (4) to review and evaluate financial statements and other submis-
13 sions from small business concerns participating in the business devel-
14 opment program to ascertain continued eligibility to receive sub-
15 contracts under the business development program;

16 (5) to make a request for the initiation of termination or graduation
17 proceedings, as appropriate, to the Associate Administrator;

18 (6) to make recommendations to the Associate Administrator con-
19 cerning protests from applicants that are denied admission to the busi-
20 ness development program;

21 (7) to decide protests regarding the status of a small business con-
22 cern as a small business concern owned and controlled by socially and
23 economically disadvantaged individuals for purposes of any program or
24 activity conducted under chapter 243 or any other provision of Federal
25 law that refers to that chapter for a definition of eligibility for any pro-
26 gram; and

27 (8) to implement such policy directives as are issued by the Associate
28 Administrator under section 233126 of this title regarding, among
29 other things, the geographic distribution of small business concerns to
30 be admitted to the business development program and the industrial
31 makeup of those small business concerns.

32 (f) DECISIONS ON PROTESTS.—

33 (1) IN GENERAL.—A decision under subsection (e)(7) shall—

34 (A) be made available to the protestor, the protested party, the
35 contracting officer (if not the protestor), and all other parties to
36 the proceeding, and published in full text; and

37 (B) include findings of fact and conclusions of law, with specific
38 reasons supporting the findings or conclusions, on each material
39 issue of fact and law of decisional significance regarding the dis-
40 position of the protest.

1 (2) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision under
2 subsection (e)(7) that was issued before September 4, 1992, shall not
3 have value as precedent in deciding any subsequent protest until the
4 decision is published in full text.

5 **§ 103109. Office of International Trade**

6 (a) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office
7 of International Trade, which shall implement the programs under chapter
8 277 for the primary purposes of increasing—

- 9 (1) the number of small business concerns that export; and
10 (2) the volume of exports by small business concerns.

11 (b) ASSOCIATE ADMINISTRATOR.—The head of the Office shall be the As-
12 sociate Administrator for International Trade, who shall be responsible to
13 the Administrator.

14 **§ 103110. Office of Rural Affairs**

15 (a) DEFINITION OF OFFICE.—In this section, the term “Office” means
16 the Office of Rural Affairs.

17 (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office
18 of Rural Affairs.

19 (c) DIRECTOR.—The Office shall be headed by a director appointed by
20 the Administrator.

21 (d) FUNCTIONS.—The Office shall—

22 (1) strive to achieve an equitable distribution of the financial assist-
23 ance available from SBA for small business concerns located in rural
24 areas;

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

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

31 (4) provide information to industries, organizations, educational in-
32 stitutions, and State and local governments concerning programs ad-
33 ministered by private organizations, educational institutions, and Fed-
34 eral, State, and local governments that improve the economic opportu-
35 nities of rural citizens; and

36 (5) work with the United States National Tourism Organization to
37 assist small business concerns in rural areas with tourism promotion
38 and development.

39 **§ 103111. Office of Women’s Business Ownership**

40 (a) DEFINITIONS.—In this section:

1 (1) ASSISTANT ADMINISTRATOR.—The term “Assistant Adminis-
2 trator” means the Assistant Administrator appointed under subsection
3 (c).

4 (2) OFFICE.—The term “Office” means the Office of Women’s Busi-
5 ness Ownership established by subsection (b).

6 (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office
7 of Women’s Business Ownership.

8 (c) ASSISTANT ADMINISTRATOR.—

9 (1) IN GENERAL.—The Office shall be administered by an Assistant
10 Administrator, who shall be appointed by the Administrator.

11 (2) QUALIFICATION.—The position of Assistant Administrator shall
12 be a Senior Executive Service position under section 3132(a)(2) of title
13 5. The Assistant Administrator shall serve as a noncareer appointee (as
14 defined in section 3132(a)(7) of that title).

15 (d) DUTIES.—The Assistant Administrator shall—

16 (1) administer SBA’s programs for the development of women’s busi-
17 ness enterprises (as defined in section 403101 of this title);

18 (2) administer the programs and services of the Office to assist
19 women entrepreneurs in the areas of—

20 (A) starting and operating a small business concern;

21 (B) development of management and technical skills;

22 (C) seeking Federal procurement opportunities; and

23 (D) increasing the opportunity for access to capital;

24 (3) administer and manage the women’s business center program;

25 (4) recommend the annual administrative and program budgets for
26 the Office (including the budget for the women’s business center pro-
27 gram);

28 (5) establish appropriate funding levels for the Office;

29 (6) review the annual budgets submitted by each applicant for the
30 women’s business center program;

31 (7) select applicants to participate in the women’s business center
32 program;

33 (8) implement chapter 273;

34 (9) maintain a clearinghouse to provide for the dissemination and ex-
35 change of information between women’s business centers;

36 (10) serve as the vice chairperson of the Interagency Committee on
37 Women’s Business Enterprise;

38 (11) serve as liaison for the National Women’s Business Council;
39 and

40 (12) advise the Administrator on appointments to the Women’s
41 Business Council.

1 (e) CONSULTATION.—In carrying out the duties described in paragraphs
2 (2) to (12) of subsection (d), the Assistant Administrator shall confer with
3 and seek the advice of the SBA officials in areas served by the women’s
4 business centers.

5 **§ 103112. Small Business and Agriculture Regulatory En-**
6 **forcement Ombudsman; regional small business**
7 **regulatory fairness boards**

8 (a) DEFINITIONS.—In this section:

9 (1) BOARD.—The term “Board” means a regional small business
10 regulatory fairness board established under subsection (e).

11 (2) OMBUDSMAN.—The term “Ombudsman” means the Small Busi-
12 ness and Agriculture Regulatory Enforcement Ombudsman designated
13 under subsection (b).

14 (b) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT
15 OMBUDSMAN.—The Administrator shall designate a Small Business and Ag-
16 riculture Regulatory Enforcement Ombudsman, who shall report directly to
17 the Administrator, using SBA personnel to the extent practicable.

18 (c) DUTIES.—The Ombudsman shall—

19 (1) work with each Federal agency with regulatory authority over
20 small business concerns to ensure that small business concerns that re-
21 ceive or are subject to an audit, on-site inspection, compliance assist-
22 ance effort, or other enforcement-related communication or contact by
23 Federal agency personnel are provided with a means by which to com-
24 ment on the enforcement activity conducted by those personnel;

25 (2)(A) establish means by which to—

26 (i) receive comments from a small business concern regarding
27 actions by Federal agency employees conducting compliance or en-
28 forcement activities with respect to the small business concern;
29 and

30 (ii) refer comments to the Inspector General of the Federal
31 agency in the appropriate circumstances; and

32 (B) otherwise seek to maintain the identity of the person and small
33 business concern making such comments on a confidential basis to the
34 same extent as employee identities are protected under section 7 of the
35 Inspector General Act of 1978 (5 U.S.C. App.);

36 (3) based on substantiated comments received from small business
37 concerns and the Boards, after having provided each Federal agency
38 described in paragraph (1) an opportunity to comment on drafts of the
39 report, annually submit to Congress and those Federal agencies a re-
40 port that—

1 (A) evaluates the enforcement activities of Federal agency per-
2 sonnel; and

3 (B) includes—

4 (i) a rating of the responsiveness to small business con-
5 cerns of the various regional and program offices of each such
6 Federal agency; and

7 (ii) a section in which any such Federal agency may make
8 such comments made by the Federal agency to drafts of the
9 report as are not addressed by the Ombudsman in the final
10 draft; and

11 (4) coordinate, and annually submit to the Administrator and to the
12 heads of Federal agencies described in paragraph (1) a report on, the
13 activities, findings, and recommendations of the Boards.

14 (d) FEDERAL AGENCIES OTHER THAN SBA.—

15 (1) ACTIONS TO ENSURE COMPLIANCE.—Federal agencies other than
16 SBA shall assist the Ombudsman and take actions as necessary to en-
17 sure compliance with this section.

18 (2) EFFECT OF SECTION.—Nothing in this section replaces or dimin-
19 ishes the activities of any ombudsman or similar office in any Federal
20 agency.

21 (e) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

22 (1) ESTABLISHMENT.—The Administrator shall establish a small
23 business regulatory fairness board in each SBA regional office.

24 (2) MEMBERSHIP.—

25 (A) IN GENERAL.—A Board shall consist of 5 members who are
26 owners, operators, or officers of small business concerns, ap-
27 pointed by the Administrator, after receiving the recommendations
28 of the chair and ranking minority member of the Committee on
29 Small Business and Entrepreneurship of the Senate and the Com-
30 mittee on Small Business of the House of Representatives.

31 (B) POLITICAL AFFILIATION.—Not more than 3 of the members
32 of a Board shall be of the same political party.

33 (C) GOVERNMENT OFFICERS OR EMPLOYEES.—No member of a
34 Board shall be an officer or employee of the Federal Government
35 in the executive branch or in Congress.

36 (D) TERM.—A member of a Board shall serve at the pleasure
37 of the Administrator for a term of 3 years or less.

38 (E) COMPENSATION.—A member of a Board shall serve without
39 compensation, except that a member shall be allowed travel ex-
40 penses, including per diem in lieu of subsistence, at rates author-
41 ized for employees of agencies under subchapter I of chapter 57

1 of title 5 while away from the home or regular place of business
2 of the member in the performance of services for the Board.

3 (3) CHAIR.—The Administrator shall select a chair from among the
4 members of a Board, who shall serve at the pleasure of the Adminis-
5 trator for not more than 1 year as chair.

6 (4) QUORUM.—A majority of the members of a Board shall con-
7 stitute a quorum for the conduct of business, but a lesser number may
8 hold hearings.

9 (5) DUTIES.—A Board shall—

10 (A) meet at least annually to advise the Ombudsman on matters
11 of concern to small business concerns relating to the enforcement
12 activities of Federal agencies;

13 (B) report to the Ombudsman on substantiated instances of ex-
14 cessive enforcement actions of Federal agencies against small busi-
15 ness concerns, including any findings or recommendations of the
16 Board as to Federal agency enforcement policy or practice; and

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

19 (6) POWERS.—

20 (A) HEARINGS; COLLECTION OF INFORMATION.—A Board may
21 hold hearings and collect information as appropriate for carrying
22 out this section.

23 (B) MAIL.—A Board may use the United States mails in the
24 same manner and under the same conditions as other Federal
25 agencies.

26 (C) ACCEPTANCE OF DONATIONS.—A Board may accept dona-
27 tions of services necessary to conduct its business, so long as the
28 donations and their sources are disclosed by the Board.

29 **§ 103113. Office of Veterans Business Development**

30 (a) DEFINITION OF ASSOCIATE ADMINISTRATOR.—In this section, the
31 term “Associate Administrator” means the Associate Administrator for Vet-
32 erans Business Development under section 103104(b) of this title.

33 (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office
34 of Veterans Business Development, which shall be administered by the Asso-
35 ciate Administrator.

36 (c) DUTIES.—The Associate Administrator—

37 (1) shall be responsible for the formulation, execution, and promotion
38 of SBA policies and programs that provide assistance to small business
39 concerns owned and controlled by veterans and small business concerns
40 owned and controlled by service-disabled veterans; and

1 (2) shall act as an ombudsman for full consideration of veterans in
2 all SBA programs.

3 **§ 103114. Task force on purchases from people who are**
4 **blind or severely disabled**

5 (a) ESTABLISHMENT OF TASK FORCE.—There is established in SBA a
6 task force on purchases from people who are blind or severely disabled.

7 (b) MEMBERSHIP.—The task force shall consist of 1 representative of the
8 small business community appointed by the Administrator and 1 individual
9 knowledgeable in the affairs of or experienced in the work of sheltered work-
10 shops appointed by the Executive Director of the Committee for Purchase
11 from People Who Are Blind or Severely Disabled established under section
12 8502 of title 41.

13 (c) DUTIES.—The task force shall meet at least once every 6 months for
14 the purpose of—

15 (1) reviewing the award of contracts under section 251103 of this
16 title; and

17 (2) recommending to the Administrator such administrative or statu-
18 tory changes as the task force considers appropriate.

19 **§ 103115. Advisory committees**

20 (a) IN GENERAL.—The Administrator shall—

21 (1) establish such advisory committees as are necessary to achieve
22 the purposes of this subtitle and subtitles II and III; and

23 (2) call meetings of the advisory committees from time to time.

24 (b) EXPENSES.—The Administrator shall—

25 (1) pay the transportation expenses and a per diem allowance in ac-
26 cordance with section 5703 of title 5 to a member of an advisory com-
27 mittee for travel and subsistence expenses incurred at the request of
28 the Administrator in connection with travel to points more than 50
29 miles distant from the home of the member in attending a meeting of
30 the advisory committee; and

31 (2) rent temporarily, within the District of Columbia or elsewhere,
32 such hotel or other accommodations as are needed to facilitate the con-
33 duct of meetings of an advisory committee.

34 **§ 103116. Bureau of PCLP Oversight**

35 (a) ESTABLISHMENT OF BUREAU.—There is established in SBA the Bu-
36 reau of PCLP Oversight.

37 (b) PURPOSE.—The Bureau of PCLP Oversight shall carry out such
38 functions of the Administrator under section 331108(c) of this title as the
39 Administrator may designate.

Subchapter II—Functions

§ 103201. General powers

(a) SEAL.—The Administrator shall have power to adopt, alter, and use a seal, which shall be judicially noticed.

(b) SERVICES AND FACILITIES.—At the request of the Administrator, the head of any Federal agency or of the Government Accountability Office or Postal Service may provide to the Administrator (on a reimbursable or non-reimbursable basis) information, services, facilities (including any field service of the Federal agency), officers, and employees of the Federal agency to assist in carrying out this title or any other law under which the Administrator provides assistance to small business concerns.

(c) COURT PROCEEDINGS.—The Administrator may sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred on a United States 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 SBA property.

(d) LIMITATION ON ADVERTISING REQUIREMENT.—Section 6101 of title 41 shall not apply to a contract of hazard insurance or a purchase or contract for a service or supply on account of property obtained by the Administrator as a result of a loan made under this subtitle or subtitle II or III if the premium for the insurance or the amount of the purchase or contract does not exceed \$1,000.

(e) REGULATIONS.—The Administrator may prescribe such regulations as the Administrator considers necessary to carry out the authority vested in the Administrator under this subtitle and subtitles II and III.

(f) ACCEPTANCE OF SERVICES AND FACILITIES.—The Administrator may—

(1) accept the services and facilities of Federal, State, and local agencies and groups, both public and private; and

(2) use such gratuitous services and facilities as may from time to time be necessary to further the objectives of the disaster assistance programs.

(g) INVESTIGATIONS.—

(1) IN GENERAL.—The Administrator may make such investigations as the Administrator considers necessary to determine whether a recipient of or participant in assistance under this subtitle or subtitle II or III or any other person has engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provi-

1 sion of this subtitle or subtitle II or III (including a regulation or order
2 issued under this subtitle or subtitle II or III).

3 (2) STATEMENTS.—The Administrator shall permit any person to
4 file with the Administrator a statement in writing, under oath or other-
5 wise as the Administrator shall determine, as to all the facts and cir-
6 cumstances concerning a matter to be investigated.

7 (3) POWERS.—For the purpose of any investigation, the Adminis-
8 trator may administer oaths and affirmations, subpoena witnesses,
9 compel the attendance of witnesses, take evidence, and require the pro-
10 duction of any records that are relevant to the inquiry. Attendance of
11 witnesses and the production of any such records may be required from
12 any place in the United States.

13 (4) CONTUMACY OR REFUSAL TO OBEY.—

14 (A) IN GENERAL.—In case of contumacy by, or refusal to obey
15 a subpoena issued to, any person (including a recipient or partici-
16 pant), the Administrator may invoke the aid of any court of the
17 United States within the jurisdiction of which an investigation or
18 proceeding is carried on, or in which the person resides or carries
19 on business, in requiring the attendance and testimony of wit-
20 nesses and the production of records, and the court may issue an
21 order requiring the person to appear before the Administrator, to
22 produce records, if so ordered, or to give testimony touching the
23 matter under investigation.

24 (B) FAILURE TO OBEY.—A failure to obey an order under sub-
25 paragraph (A) may be punished by the court as a contempt of
26 court, for which purpose process may be served in any judicial dis-
27 trict of which the person is an inhabitant or in which the person
28 may be found.

29 (h) EXAMINATION AND REVIEW FEES.—

30 (1) IN GENERAL.—The Administrator may require a lender author-
31 ized to make loans under the general business loan program, the disas-
32 ter loan program, the private disaster assistance program, the inter-
33 mediary lending pilot program, or the microloan program to pay exam-
34 ination and review fees.

35 (2) USE.—Fees collected under paragraph (1) shall be deposited in
36 the account for salaries and expenses of the Administrator and shall
37 be available for the costs of examinations, reviews, and other lender
38 oversight activities.

39 (i) LOAN REQUIREMENTS RELATING TO ASSISTANCE PROVIDED TO LOAN
40 APPLICANTS, NONEMPLOYMENT OF PERSONS ASSOCIATED WITH SBA, AND
41 LOAN APPLICATIONS.—No loan shall be made or equipment, facilities, or

1 services furnished by the Administrator under this subtitle or subtitle II or
2 III to any business concern unless the owners, partners, or officers of the
3 business concern—

4 (1) certify to the Administrator—

5 (A) the names of any attorneys, agents, or other persons en-
6 gaged by or on behalf of the business concern for the purpose of
7 expediting applications made to the Administrator for assistance
8 of any sort; and

9 (B) the amount of fees paid or to be paid to any such persons;

10 (2) execute an agreement binding the business concern, for a period
11 of 2 years after any assistance is rendered by the Administrator to the
12 business concern, to refrain from employing, tendering any office or
13 employment to, or retaining for professional services any individual
14 who, on the date on which any part of the assistance was rendered,
15 or within 1 year prior to that date, served as an officer, attorney,
16 agent, or employee of the Administrator occupying a position or engag-
17 ing in an activity that, as determined by the Administrator, involves
18 the exercise of discretion with respect to the granting of assistance
19 under this subtitle or subtitle II or III; and

20 (3) furnish—

21 (A) the names of lending institutions to which the business con-
22 cern has applied for a loan; and

23 (B) the date, amount, terms, and proof of refusal of any loan.

24 (j) **AUTHORITY RELATING TO TRANSFER OF FUNCTIONS, POWERS, AND**
25 **DUTIES.**—The President may—

26 (1) transfer to the Administrator any function, power, or duty of any
27 Federal agency that relates primarily to small business problems; and

28 (2) in connection with the transfer, provide for appropriate transfers
29 of records, property, necessary personnel, and unexpended balances of
30 appropriations and other funds available to the Federal agency from
31 which the transfer is made.

32 (k) **FAIR CHARGES; RECOVERY OF DIRECT COSTS.**—To the fullest extent
33 that the Administrator considers practicable, the Administrator shall—

34 (1) make a fair charge for the use of Government-owned property;
35 and

36 (2) make and let contracts on a basis that will result in a recovery
37 of the direct costs incurred by the Administrator.

38 (l) **NONDUPLICATION OF WORK OR ACTIVITY.**—The Administrator shall
39 not duplicate the work or activity of any other Federal agency unless such
40 work or activity is expressly provided for in this subtitle or subtitle II or
41 III.

1 (m) SAFE DEPOSIT BOX RENTALS.—Subsections (a) and (b) of section
2 3324 of title 31 shall not apply to prepayments of rentals made by the Ad-
3 ministrator on safe deposit boxes used by the Administrator for the safe-
4 guarding of instruments held as security for loans or for the safeguarding
5 of other documents.

6 (n) NONDISCRIMINATION.—In carrying out the programs administered by
7 the Administrator, the Administrator shall not discriminate on the basis of
8 sex or marital status against any small business concern or other person
9 applying for or receiving assistance from SBA.

10 (o) SPECIAL CONSIDERATION TO VETERANS.—In carrying out the pro-
11 grams administered by the Administrator, the Administrator shall give spe-
12 cial consideration to veterans and their survivors or dependents.

13 (p) PROHIBITION OF USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY
14 WITHIN UNITED STATES.—None of the funds made available under this
15 subtitle or subtitle II or III may be used to provide any direct benefit or
16 assistance to any individual in the United States if the Administrator or the
17 official to which the funds are made available receives notification that the
18 individual is not lawfully within the United States.

19 (q) OBSCENE PRODUCTS AND SERVICES.—Notwithstanding any other
20 provision of law, the Administrator shall not provide any financial or other
21 assistance to any business concern or other person engaged in the produc-
22 tion or distribution of any product or service that has been determined by
23 a court of competent jurisdiction to be obscene.

24 (r) GIFTS.—In carrying out the functions of the Administrator under this
25 subtitle and subtitles II and III and to carry out the activities authorized
26 by chapter 403, the Administrator may—

27 (1) accept, in the name of the Administrator, and employ or dispose
28 of in furtherance of the purposes of this subtitle or subtitle II or III,
29 any money or property, real, personal, or mixed, tangible, or intangible,
30 received by gift, devise, bequest, or otherwise; and

31 (2) accept gratuitous services and facilities.

32 **§ 103202. Financial management**

33 (a) ACCOUNTS.—

34 (1) IN GENERAL.—All repayments of loans, debentures, payments of
35 interest, and other receipts arising out of transactions entered into by
36 the Administrator shall be deposited in appropriate accounts as deter-
37 mined by the Administrator.

38 (2) BUDGETS.—Business-type budgets for each of the accounts re-
39 ferred to in paragraph (1) shall be—

40 (A) submitted to the Committee on Appropriations and Commit-
41 tee on Small Business and Entrepreneurship of the Senate and

1 the Committee on Appropriations and Committee on Small Busi-
2 ness of the House of Representatives; and

3 (B) enacted in the manner prescribed by sections 9103 and
4 9104 of title 31 for wholly owned Government corporations.

5 (3) REPORTS.—As soon as possible after the beginning of each cal-
6 endar quarter, the Administrator shall submit to the Committee on Ap-
7 propriations and Committee on Small Business and Entrepreneurship
8 of the Senate and the Committee on Appropriations and Committee on
9 Small Business of the House of Representatives a report that describes
10 the status of each of the accounts referred to in paragraph (1).

11 (4) ISSUANCE OF NOTES.—

12 (A) IN GENERAL.—The Administrator may issue notes to the
13 Secretary of the Treasury for the purpose of obtaining funds nec-
14 essary for discharging obligations under, and for authorized ex-
15 penditures out of, the accounts referred to in paragraph (1).

16 (B) FORM.—Notes issued under subparagraph (A) shall be in
17 such form and denominations, have such maturities, and be sub-
18 ject to such terms and conditions as the Administrator may pre-
19 scribe with the approval of the Secretary of the Treasury.

20 (C) INTEREST.—Notes issued under subparagraph (A) shall
21 bear interest at a rate fixed by the Secretary of the Treasury, tak-
22 ing into consideration the current average market yield of out-
23 standing marketable obligations of the United States having matu-
24 rities comparable to those of the notes issued under subparagraph
25 (A).

26 (D) PURCHASE BY THE SECRETARY OF THE TREASURY.—The
27 Secretary of the Treasury shall purchase any SBA notes issued
28 under subparagraph (A), and for that purpose the Secretary of the
29 Treasury may use as a public debt transaction the proceeds from
30 the sale of any securities issued under chapter 31 of title 31, and
31 the purposes for which such securities may be issued under that
32 chapter are extended to include the purchase of notes issued under
33 subparagraph (A).

34 (E) TREATMENT AS PUBLIC DEBT TRANSACTIONS.—All redemp-
35 tions, purchases, and sales by the Secretary of the Treasury of
36 notes issued under subparagraph (A) shall be treated as public
37 debt transactions of the United States.

38 (F) BORROWING AUTHORITY SUBJECT TO AVAILABILITY OF AP-
39 PROPRIATIONS.—All borrowing authority contained in this para-
40 graph shall be effective only to such extent or in such amounts
41 as are provided in advance in appropriation Acts.

1 (5) UNNEEDED AMOUNTS.—Amounts in an account referred to in
2 paragraph (1) that are not needed for current operations may be paid
3 into miscellaneous receipts of the Treasury.

4 (6) INTEREST.—

5 (A) ACTUAL INTEREST COLLECTED.—Following the close of
6 each fiscal year, the Administrator shall pay into the miscellaneous
7 receipts of the United States Treasury the actual interest that
8 SBA collects during that fiscal year on all financings made under
9 subtitle II.

10 (B) INTEREST RECEIVED ON FINANCING FUNCTIONS.—

11 (i) IN GENERAL.—Except on loan disbursements on which
12 interest is paid under subparagraph (A), following the close
13 of each fiscal year, the Administrator shall pay into mis-
14 cellaneous receipts of the Treasury interest received by SBA
15 on financing functions performed under this subtitle, subtitle
16 II, and divisions B and D of subtitle III if the capital used
17 to perform those functions originates from appropriated
18 funds.

19 (ii) TREATMENT.—Payments under clause (i) shall be
20 treated by the Department of the Treasury as interest in-
21 come, not as retirement of indebtedness.

22 (7) CONTRIBUTIONS TO EMPLOYEES' COMPENSATION FUNDS.—

23 (A) IN GENERAL.—The Administrator shall contribute to the
24 employees' compensation fund, on the basis of annual billings as
25 determined by the Secretary of Labor, for the benefit payments
26 made from the fund on account of employees engaged in carrying
27 out functions financed under the accounts described in paragraph
28 (1).

29 (B) STATEMENT OF COST.—The annual billings shall include a
30 statement of the fair portion of the cost of the administration of
31 the employees' compensation fund, which shall be paid by the Ad-
32 ministrator into the Treasury as miscellaneous receipts.

33 (b) FINANCIAL MANAGEMENT POWERS.—

34 (1) DISPOSITION OF EVIDENCE OF DEBT, CONTRACT, CLAIM, PER-
35 SONAL PROPERTY, OR SECURITY.—Under regulations prescribed by the
36 Administrator, the Administrator may—

37 (A) assign or sell at public or private sale, or otherwise dispose
38 of for cash or credit, in the discretion of the Administrator and
39 on such terms and conditions and for such consideration as the
40 Administrator determines to be reasonable, any evidence of debt,
41 contract, claim, personal property, or security assigned to or held

1 by the Administrator in connection with the payment of loans
2 granted under subtitle II or III; and

3 (B) collect or compromise all obligations assigned to or held by
4 the Administrator and all legal or equitable rights accruing to the
5 Administrator in connection with the payment of such loans until
6 such time as such obligations may be referred to the Attorney
7 General for suit or collection.

8 (2) SBA MONEYS.—

9 (A) DEPOSIT IN TREASURY.—All moneys of SBA not otherwise
10 employed may be deposited in the Treasury subject to check by
11 authority of the Administrator.

12 (B) FEDERAL RESERVE BANKS.—

13 (i) IN GENERAL.—The Federal Reserve banks shall act as
14 depositaries, custodians, and fiscal agents for SBA in the
15 general performance of its powers under this subtitle and sub-
16 titles II and III.

17 (ii) REIMBURSEMENT.—A Federal Reserve bank, when des-
18 ignated by the Administrator as fiscal agent for SBA, shall
19 be entitled to be reimbursed for all expenses incurred as fiscal
20 agent.

21 (C) BANKS INSURED BY FDIC.—A bank insured by the Federal
22 Deposit Insurance Corporation, when designated by the Secretary
23 of the Treasury, shall act as custodian and financial agent for
24 SBA.

25 (3) REAL PROPERTY.—

26 (A) CONVEYANCE.—The power to convey and to execute in the
27 name of the Administrator a deed of conveyance, deed of release,
28 assignment and satisfaction of mortgages, or any other written in-
29 strument relating to real property or any interest in real property
30 acquired by the Administrator under this subtitle or subtitle II or
31 III may be exercised—

32 (i) by the Administrator; or

33 (ii) by any officer or agent appointed by the Administrator,
34 with or without the execution of an express delegation of
35 power or power of attorney.

36 (B) OTHER AUTHORITY.—The Administrator may deal with,
37 complete, renovate, improve, modernize, insure, or rent, or sell for
38 cash or credit, on such terms and conditions and for such consid-
39 eration as the Administrator determines to be reasonable, any real
40 property conveyed to or otherwise acquired by the Administrator

1 in connection with the payment of loans granted under subtitle II
2 or III.

3 (4) COLLECTIONS.—

4 (A) IN GENERAL.—The Administrator may pursue to final col-
5 lection, by way of compromise or otherwise, all claims against 3d
6 parties assigned to the Administrator in connection with loans
7 made by the Administrator.

8 (B) DEFICIENCY JUDGMENTS.—The authority under subpara-
9 graph (A) includes authority to obtain a deficiency judgment or
10 otherwise in the case of a mortgage assigned to the Administrator.

11 (5) ACQUISITION OF PROPERTY.—The Administrator may acquire, in
12 any lawful manner, any property (real, personal, or mixed, tangible or
13 intangible), when the Administrator considers it necessary or appro-
14 priate to the conduct of the general business loan program and disaster
15 assistance programs.

16 (6) ASSET SALES.—In connection with the Administrator's imple-
17 mentation of a program to sell to the private sector loans and other
18 assets held by the Administrator, the Administrator shall provide to the
19 Committee on Small Business and Entrepreneurship of the Senate and
20 the Committee on Small Business of the House of Representatives a
21 copy of the draft and final plans describing the sale and the anticipated
22 benefits resulting from the sale.

23 (c) SALE OF GUARANTEED PORTION OF LOAN BY LENDER OR SUBSE-
24 QUENT HOLDER.—

25 (1) IN GENERAL.—The guaranteed portion of a loan made under
26 subtitle II or III may be sold by the lender, and by any subsequent
27 holder, consistent with regulations prescribed by the Administrator,
28 subject to the limitations stated in paragraph (2).

29 (2) LIMITATIONS.—

30 (A) APPROVAL.—Before the Administrator approves a sale or
31 resale under paragraph (1), if the lender certifies that the loan has
32 been properly closed and that the lender has substantially com-
33 plied with the guarantee agreement and the regulations of the Ad-
34 ministrator, the Administrator shall review and approve only mate-
35 rials not previously approved.

36 (B) FEES.—All fees due the Administrator on a guaranteed
37 loan shall be paid in full prior to a sale or resale under paragraph
38 (1).

39 (C) DISBURSEMENT.—A loan (except a loan made under section
40 205108 of this title) shall be fully disbursed to the borrower before
41 a sale or resale under paragraph (1).

1 (3) CONTINUING OBLIGATION.—After a loan is sold, the lender shall
2 remain obligated under its guarantee agreement with the Administrator
3 and shall continue to service the loan in a manner consistent with the
4 terms and conditions of the guarantee agreement.

5 (4) SECONDARY MARKET.—

6 (A) PROCEDURES.—The Administrator shall develop such pro-
7 cedures as are necessary for—

8 (i) the facilitation, administration, and promotion of sec-
9 ondary market operations; and

10 (ii) assessing the increase of small business access to cap-
11 ital at reasonable rates and terms as a result of secondary
12 market operations.

13 (B) UNIFORM REGULATIONS.—The sale of the unguaranteed
14 portion of a loan made under the general business loan program
15 shall not be permitted except in accordance with a regulation pre-
16 scribed by the Administrator that—

17 (i) applies uniformly to both depository institutions and
18 other lenders; and

19 (ii) specifies the terms and conditions under which such
20 sales can be permitted, including maintenance of appropriate
21 reserve requirements and other safeguards to protect the
22 safety and soundness of the program.

23 (C) LONG-TERM VIABILITY.—The Administrator shall take such
24 actions in the awarding of contracts as the Administrator consid-
25 ers necessary to ensure the continued long-term viability of the
26 secondary market in loans, debentures, and other securities guar-
27 anteed by the Administrator.

28 (5) EFFECT OF SUBSECTIONS.—Nothing in this subsection or sub-
29 section (d) impedes or extinguishes—

30 (A) the right of a borrower or a successor in interest to a bor-
31 rower to prepay (in whole or in part) a loan made under the gen-
32 eral business loan program, the guaranteed portion of which may
33 be included in a trust or pool; or

34 (B) the rights of any person under subsection (i).

35 (d) TRUST CERTIFICATES.—

36 (1) IN GENERAL.—The Administrator may issue trust certificates
37 representing ownership of all or a fractional part of the guaranteed
38 portion of 1 or more loans guaranteed by the Administrator under sub-
39 title II or section 331103 of this title.

1 (2) TRUST OR POOL.—A trust certificate shall be based on and
2 backed by a trust or pool approved by the Administrator and composed
3 solely of the entire guaranteed portion of a loan.

4 (3) GUARANTEE.—

5 (A) IN GENERAL.—The Administrator, on such terms and con-
6 ditions as the Administrator considers appropriate, may guarantee
7 the timely payment of the principal of and interest on trust certifi-
8 cates issued by the Administrator or an agent of the Adminis-
9 trator for purposes of this subsection.

10 (B) LIMIT.—

11 (i) IN GENERAL.—A guarantee under subparagraph (A)
12 shall be limited to the extent of principal and interest on the
13 guaranteed portion of the loan or loans that compose the
14 trust or pool.

15 (ii) PREPAYMENT.—If a loan in a trust or pool is prepaid,
16 either voluntarily or in the event of default, the guarantee of
17 timely payment of principal and interest on the trust certifi-
18 cate shall be reduced in proportion to the amount of principal
19 and interest that the prepaid loan represents in the trust or
20 pool.

21 (iii) INTEREST.—Interest on prepaid or defaulted loans
22 shall accrue and be guaranteed by the Administrator only
23 through the date of payment on the guarantee.

24 (iv) CALL.—During the term of a trust certificate, the
25 trust certificate may be called for redemption due to prepay-
26 ment or default of all loans constituting the trust or pool.

27 (4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full
28 faith and credit of the United States is pledged to the payment of all
29 amounts that may be required to be paid under any guarantee of a
30 trust certificate issued by SBA or its agent under this subsection.

31 (5) FEES.—

32 (A) IN GENERAL.—The Administrator may impose a fee for a
33 loan guarantee sold into the secondary market under subsection
34 (e) in an amount equal to not more than 50 percent of the portion
35 of the sale price that exceeds 110 percent of the outstanding prin-
36 cipal amount of the portion of the loan guaranteed by the Admin-
37 istrator.

38 (B) COLLECTION; USE.—A fee under subparagraph (A)—

39 (i) shall be collected by the Administrator or by the agent
40 that carries out on behalf of the Administrator the central
41 registration functions required by subsection (e); and

1 (ii) shall be paid to the Administrator and used solely to
2 reduce the subsidy on loans guaranteed under the general
3 business loan program.

4 (C) NO CHARGE TO BORROWER.—A fee under subparagraph (A)
5 shall not be charged to the borrower under the loan that is guar-
6 anteed.

7 (D) NO PRECLUSION.—Nothing in this paragraph precludes an
8 agent of the Administrator from collecting a fee approved by the
9 Administrator for the functions described in subsection
10 (e)(2)(A)(ii).

11 (E) PENALTY.—The Administrator may impose and collect, di-
12 rectly or through a fiscal and transfer agent, a reasonable penalty
13 on late payment of a fee under subparagraph (A) in an amount
14 not to exceed 5 percent of the fee per month plus interest.

15 (F) AGENTS.—

16 (i) IN GENERAL.—The Administrator may contract with an
17 agent to carry out, on behalf of SBA, the assessment and col-
18 lection of the annual fee established under section 203114 of
19 this title.

20 (ii) COMPENSATION.—An agent may receive, as compensa-
21 tion for services, any interest earned on the fee while in the
22 control of the agent before the time at which the agent is con-
23 tractually required to remit the fee to the Administrator.

24 (6) SUBROGATION.—If the Administrator pays a claim under a guar-
25 antee issued under this subsection, the Administrator shall be sub-
26 rogated fully to the rights satisfied by the payment.

27 (7) EXERCISE OF OWNERSHIP RIGHTS.—No Federal, State, or local
28 law shall preclude or limit the exercise by SBA of its ownership rights
29 in the portions of loans constituting the trust or pool against which a
30 trust certificate is issued.

31 (8) DIVISION OF LOAN GUARANTEE INTO INCREMENTS.—

32 (A) IN GENERAL.—If the amount of the guaranteed portion of
33 a loan under the general business loan program is more than
34 \$500,000, the Administrator shall, on request of a pool assembler,
35 divide the loan guarantee into increments of \$500,000 and 1 in-
36 crement of any remaining amount less than \$500,000, to permit
37 the maximum amount of any loan in a pool to be not more than
38 \$500,000.

39 (B) LIMITATION.—Only 1 increment of any loan guarantee di-
40 vided under subparagraph (A) may be included in the same pool.

- 1 (C) INCREMENTS TO DIFFERENT BORROWERS.—Increments of
2 loan guarantees to different borrowers that are divided under sub-
3 paragraph (A) may be included in the same pool.
- 4 (e) CENTRAL REGISTRATION OF LOANS AND TRUST CERTIFICATES.—
- 5 (1) DEFINITION OF SELLER.—In this subsection, the term “seller”,
6 with respect to a sale of a loan, does not include—
- 7 (A) an entity that made the loan; or
8 (B) an individual or entity that sells 3 or fewer guaranteed
9 loans per year.
- 10 (2) IN GENERAL.—Under regulations prescribed by the Adminis-
11 trator—
- 12 (A) the Administrator shall—
- 13 (i) provide for a central registration of all loans and trust
14 certificates sold under subsections (c) and (d);
15 (ii) contract with an agent to carry out on behalf of the
16 Administrator the central registration functions of this sec-
17 tion and the issuance of trust certificates to facilitate pooling;
18 and
19 (iii) prior to any sale, require the seller to disclose to a pur-
20 chaser of the guaranteed portion of a loan guaranteed under
21 subtitle II and to the purchaser of a trust certificate issued
22 under subsection (d) information on the terms, conditions,
23 and yield of the instrument to be sold; and
- 24 (B) the Administrator may regulate brokers and dealers in
25 guaranteed loans and trust certificates sold under subsections (c)
26 and (d).
- 27 (3) AGENT.—An agent described in paragraph (2)(A)(ii)—
- 28 (A) shall provide a fidelity bond or insurance in such amounts
29 as the Administrator determines to be necessary to fully protect
30 the interest of the Government; and
31 (B) may be compensated through any of the fees assessed under
32 this section and any interest earned on any funds collected by the
33 agent while the funds are in the control of the agent and before
34 the time at which the agent is contractually required to transfer
35 the funds to the Administrator or to the holders of the trust cer-
36 tificates, as appropriate.
- 37 (4) FORM OF REGISTRATION.—
- 38 (A) IN GENERAL.—This subsection does not preclude the use of
39 a book-entry or other electronic form of registration for trust cer-
40 tificates.

1 (B) BOOK-ENTRY SYSTEM.—SBA may, with the consent of the
2 Secretary of the Treasury, use the book-entry system of the Fed-
3 eral Reserve System.

4 (f) ACTION DEALING WITH OR REALIZING ON LOAN.—

5 (1) IN GENERAL.—In addition to exercising any power, function,
6 privilege, or immunity vested in the Administrator by any other provi-
7 sion of law, the Administrator may take any and all actions (including
8 the procurement of the services of an attorney by contract in any office
9 in which an attorney is not or cannot be economically employed full
10 time to render such services) if the Administrator determines that such
11 action is necessary or desirable in making, servicing, compromising,
12 modifying, liquidating, or otherwise dealing with or realizing on a loan
13 made under subtitle II or III.

14 (2) DEFERRED PARTICIPATION LOAN.—With respect to a deferred
15 participation loan, the Administrator may, in the discretion of and pur-
16 suant to regulations promulgated by the Administrator, authorize a
17 participating lending institution to take action relating to loan servicing
18 on behalf of the Administrator, including determining eligibility and
19 creditworthiness and loan monitoring, collection, and liquidation.

20 (3) PREFERRED LENDERS PROGRAM.—

21 (A) IN GENERAL.—Under this subsection, the Administrator
22 may carry out a preferred lenders program under which a written
23 agreement between a lender and the Administrator delegates to
24 the lender—

25 (i) complete authority to make and close loans with a guar-
26 antee from the Administrator without obtaining the prior spe-
27 cific approval of the Administrator; and

28 (ii) complete authority to service and liquidate the loans
29 without obtaining the prior specific approval of the Adminis-
30 trator for routine servicing and liquidation activities, subject
31 to the limitation that the lender shall not take any action cre-
32 ating an actual or apparent conflict of interest.

33 (B) EXPORT-IMPORT BANK LENDERS.—A lender that is partici-
34 pating in the delegated authority lender program of the Export-
35 Import Bank of the United States (or any successor to the pro-
36 gram) shall be eligible to participate in the preferred lenders pro-
37 gram.

38 (C) STANDARD REVIEW PROGRAM.—The Administrator shall
39 carry out a standard review program under which, on entry into
40 the preferred lenders program and annually or more frequently
41 thereafter, each preferred lender's participation in the preferred

1 lenders program is assessed, including an assessment of defaults,
2 loans, and recoveries of loans made by the preferred lender under
3 the general business loan program.

4 (g) FEES.—

5 (1) IN GENERAL.—Except as provided in paragraph (2), the Admin-
6 istrator may impose, retain, and use only—

7 (A) fees that are specifically authorized by law; and

8 (B) fees that were in effect on September 30, 1994, in the
9 amounts and at the rates in effect on that date.

10 (2) ADDITIONAL FEES.—The Administrator may, subject to approval
11 in appropriations Acts, impose, retain, and use, in addition to fees de-
12 scribed in paragraph (1)—

13 (A) a fee not exceeding \$100 for a loan servicing action (other
14 than a loan assumption) requested after disbursement of the loan,
15 including any substitution of collateral, release or substitution of
16 a guarantor, reamortization, or similar action;

17 (B) a fee not exceeding \$300 for a loan assumption;

18 (C) a fee not exceeding 1 percent of the amount of requested
19 financings under chapter 303 for which the applicant requests a
20 commitment from SBA for funding during the following year; and

21 (D) fees to recover the direct, incremental cost involved in the
22 production and dissemination of compilations of information pro-
23 duced by the Administrator under this title.

24 (3) LIMITATION ON USE.—Amounts collected under this subsection
25 shall be used solely to facilitate the administration of the program that
26 generated the excess amounts.

27 (h) AMOUNTS COLLECTED BY FISCAL TRANSFER AGENTS.—

28 (1) IN GENERAL.—The Administrator may collect, retain and use,
29 subject to approval in appropriations Acts, any amount collected by a
30 fiscal transfer agent that is not used by the fiscal transfer agent as
31 payment of the cost of loan pooling or debenture servicing operations.

32 (2) LIMITATION ON USE.—Amounts collected under this subsection
33 shall be used solely to facilitate the administration of the program that
34 generated the excess amounts.

35 (i) UNDERTAKING OR SUSPENSION OF PAYMENT OBLIGATION.—

36 (1) DEFINITION OF REQUIRED PAYMENTS.—In this subsection, the
37 term “required payment”, with respect to a loan, means a payment of
38 principal and interest under the loan.

39 (2) IN GENERAL.—Subject to the requirements and conditions con-
40 tained in this subsection, on application by a small business concern

1 that is the recipient of a loan made under subtitle II or III, the Admin-
2 istrator may—

3 (A) undertake the small business concern's obligation to make
4 the required payments under the loan; or

5 (B) if the loan was a direct loan made by the Administrator,
6 suspend the obligation.

7 (3) NO REQUIREMENT FOR PAYMENT.—During any period in which
8 required payments are being made by the Administrator pursuant to
9 an undertaking of an obligation or in which an obligation is suspended,
10 no required payment with respect to the loan may be required to be
11 made by the small business concern.

12 (4) CONDITIONS.—The Administrator may undertake or suspend for
13 a period of not to exceed 5 years a small business concern's obligation
14 under this subsection only if—

15 (A) without the undertaking or suspension of the obligation, the
16 small business concern would, as determined in the sole discretion
17 of the Administrator, become insolvent or remain insolvent;

18 (B) with the undertaking or suspension of the obligation, the
19 small business concern would, as determined in the sole discretion
20 of the Administrator, become or remain a viable business; and

21 (C) the small business concern executes an agreement in writing
22 satisfactory to the Administrator as provided in paragraph (6).

23 (5) EXTENSION OF TERM.—Notwithstanding section 203109 of this
24 title, the Administrator may extend the term of a loan on which the
25 Administrator undertakes or suspends the obligation under this sub-
26 section for a corresponding period of time.

27 (6) AGREEMENT; REQUIRED ACTION.—

28 (A) AGREEMENT.—Before undertaking or suspending a small
29 business concern's obligation under this subsection, the Adminis-
30 trator, consistent with the purposes of this subsection, shall re-
31 quire the small business concern to agree in writing to repay to
32 the Administrator the aggregate amount of the required payments
33 during the period for which the obligation was undertaken or sus-
34 pended—

35 (i) by periodic payments not less in amount or less fre-
36 quently falling due than those that were due under the loan
37 during that period;

38 (ii) pursuant to a repayment schedule agreed on by the Ad-
39 ministrator and the small business concern; or

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

1 (B) REQUIRED ACTION.—In addition to requiring the small
2 business concern to execute the agreement described in subpara-
3 graph (A), the Administrator shall, before undertaking or suspend-
4 ing the obligation, take such action, and require the small business
5 concern to take such action, as the Administrator considers appro-
6 priate in the circumstances (including the provision of such secu-
7 rity as the Administrator considers necessary or appropriate to en-
8 sure that the rights and interests of the lender will be safeguarded
9 adequately during and after the period in which the obligation is
10 undertaken or suspended).

11 (j) INTEREST RATE ON DEFERRED PARTICIPATION.—On purchase by the
12 Administrator of a deferred participation entered into under the general
13 business loan program, disaster loan program, private disaster loan pro-
14 gram, intermediary lending pilot program, or microloan program, the Ad-
15 ministrator may continue to charge a rate of interest not to exceed that ini-
16 tially charged by the participating institution on the amount purchased for
17 the remaining term of the indebtedness.

18 (k) SUBORDINATION TO CERTAIN STATE TAX LIENS.—Any interest held
19 by the Administrator in property as security for a loan shall be subordinate
20 to any lien on the property for taxes due on the property to a State or polit-
21 ical subdivision of a State in any case in which the lien would, under appli-
22 cable State law, be superior to that interest if the interest were held by any
23 party other than the United States.

24 (l) RISK MANAGEMENT DATABASE.—

25 (1) ESTABLISHMENT.—The Administrator shall establish, within the
26 management system for the general business loan program, disaster as-
27 sistance programs, and certified development company program a man-
28 agement information system that will generate a database capable of
29 providing timely and accurate information in order to identify loan un-
30 derwriting, collections, recovery, and liquidation problems.

31 (2) INFORMATION TO BE MAINTAINED.—In addition to such other
32 information as the Administrator considers appropriate, the database
33 established under paragraph (1) shall, with respect to each loan pro-
34 gram described in paragraph (1), include information relating to—

- 35 (A) the identity of the institution making the guaranteed loan
36 or issuing the debenture;
37 (B) the identity of the borrower;
38 (C) the total dollar amount of the loan or debenture;
39 (D) the total dollar amount of Government exposure in each
40 loan;

1 (E) the SBA district in which the borrower has its principal of-
2 fice;

3 (F) the principal line of business of the borrower, as identified
4 by North American Industry Classification System (or any succes-
5 sor to that system) code;

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

8 (H) the number and amount of repurchases, losses, and recover-
9 ies in each program;

10 (I) the number of deferrals or forbearances in each program (in-
11 cluding days and number of instances);

12 (J) comparisons, on the basis of loan program, lender, SBA dis-
13 trict, and SBA region, for all the data elements maintained; and

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

18 **§ 103203. Small business economic database**

19 (a) IN GENERAL.—The Administrator shall maintain an external small
20 business economic database for the purpose of providing Congress and the
21 Administrator information on the economic condition and the expansion or
22 contraction of the small business sector.

23 (b) ECONOMIC INDICES.—In carrying out subsection (a), the Adminis-
24 trator shall publish on a regular basis national small business economic indi-
25 ces and, to the extent feasible, regional small business economic indices that
26 include data relating to—

27 (1) employment, layoffs, and new hires;

28 (2) number of business establishments and the types of such estab-
29 lishments such as sole proprietorships, corporations, and partnerships;

30 (3) number of business formations and failures;

31 (4) sales and new orders;

32 (5) back orders;

33 (6) investment in plant and equipment;

34 (7) changes in inventory and rate of inventory turnover;

35 (8) sources and amounts of capital investment, including debt, eq-
36 uity, and internally generated funds;

37 (9) debt-to-equity ratios;

38 (10) exports;

39 (11) number and dollar amount of mergers and acquisitions by size
40 of acquiring and acquired firm; and

41 (12) concentration ratios.

1 **§ 103204. Small business computer security and education**
2 **program**

3 (a) IN GENERAL.—The Administrator shall establish a small business
4 computer security and education program to—

5 (1) provide small business concerns information regarding—

6 (A) utilization and management of computer technology;

7 (B) computer crimes committed against small business con-
8 cerns; and

9 (C) security for computers owned or utilized by small business
10 concerns;

11 (2) provide for periodic forums for small business concerns to im-
12 prove their knowledge of the matters described in paragraph (1); and

13 (3) provide training opportunities to educate small business users on
14 computer security techniques.

15 (b) INFORMATION AND MATERIALS.—The Administrator, after consulta-
16 tion with the Director of the National Institute of Standards and Tech-
17 nology of the Department of Commerce, shall develop information and mate-
18 rials to carry out the activities described in subsection (a).

19 **§ 103205. General policies governing the granting and denial**
20 **of applications**

21 The Administrator shall establish general policies (particularly with ref-
22 erence to the public interest in the granting and denial of applications for
23 financial assistance by the Administrator and with reference to the coordi-
24 nation of the functions of the Administrator with other activities and poli-
25 cies of the Government), which shall govern the granting and denial of ap-
26 plications for financial assistance by the Administrator.

27 **§ 103206. Retention of records**

28 The Administrator and the Inspector General of SBA shall—

29 (1) retain all correspondence, records of inquiries, memoranda, re-
30 ports, books, and other records, including memoranda as to all inves-
31 tigations conducted by or for SBA, for a period of at least 1 year after
32 the date of the record; and

33 (2) at all times keep the records available for inspection and exam-
34 ination by the Committee on Small Business and Entrepreneurship of
35 the Senate and the Committee on Small Business of the House of Rep-
36 resentatives or the authorized representatives of either Committee.

37 **§ 103207. Consultation and cooperation with other Federal**
38 **agencies**

39 (a) IN GENERAL.—To the extent that the Administrator considers it nec-
40 essary to protect and preserve small business interests, the Administrator

1 shall consult and cooperate with other Federal agencies in the formulation
2 by the Administrator of policies affecting small business concerns.

3 (b) RESPONSE.—When requested by the Administrator, a Federal agency
4 shall consult and cooperate with the Administrator in the formulation by the
5 Federal agency of policies affecting small business concerns to ensure that
6 small business interests will be recognized, protected, and preserved.

7 (c) EFFECT OF SECTION.—This section does not require a Federal agen-
8 cy to consult or cooperate with the Administrator in a case in which the
9 head of the Federal agency determines that such consultation or cooperation
10 would unduly delay action that must be taken by the Federal agency to pro-
11 tect the national interest in an emergency.

12 **§ 103208. Representation of status as small business concern**

13 (a) IN GENERAL.—Any representation of the status of any concern or
14 person as a small business concern, HUBZone small business concern, small
15 business concern owned and controlled by socially and economically dis-
16 advantaged individuals, or small business concern owned and controlled by
17 women in order to obtain any prime contract or subcontract described in
18 subsection (b) shall be of no effect unless the representation is in writing.

19 (b) PRIME CONTRACTS AND SUBCONTRACTS.—A prime contract or sub-
20 contract referred to in subsection (a) is—

21 (1) a prime contract to be awarded under chapter 251, 253, 261,
22 or 263;

23 (2) a subcontract to be awarded under chapter 233;

24 (3) a subcontract that is to be included as part or all of a goal con-
25 tained in a subcontracting plan required under section 243103 of this
26 title; or

27 (4) a prime contract or subcontract to be awarded as a result, or
28 in furtherance, of any other provision of Federal law that specifically
29 references chapter 243 for a definition of program eligibility.

30 **§ 103209. Criminal background checks**

31 Before approval of a loan under the general business loan program or a
32 debenture guarantee under the certified development company program, the
33 Administrator may verify the applicant's criminal background (or lack of
34 criminal background) through the best available means, including, if pos-
35 sible, use of the National Crime Information Center computer system at the
36 Federal Bureau of Investigation.

37 **Chapter 105—Penalties**

Sec.

105101. False statement; overvaluation of security.

105102. Unlawful act by person connected with SBA.

105103. Concealment, disposal, or conversion of property.

105104. Misrepresentation of status as small business concern.

105105. False certification of past compliance.

105106. Subcontracting requirements and limitations.

1 **§ 105101. False statement; overvaluation of security**

2 A person that makes a statement, knowing the statement to be false, or
3 willfully overvalues a security for the purpose of obtaining for himself or for
4 any applicant a loan, or a loan extension by renewal, deferment of action,
5 or otherwise, or the acceptance, release, or substitution of security for a
6 loan, or for the purpose of influencing in any way the action of the Adminis-
7 trator, or for the purpose of obtaining money, property, or anything of
8 value, under this subtitle or subtitle II or III, shall be imprisoned not more
9 than 2 years, fined not more than \$5,000, or both.

10 **§ 105102. Unlawful act by person connected with SBA**

11 A person connected in any capacity with SBA that—

12 (1) embezzles, abstracts, purloins, or willfully misapplies any money,
13 funds, security, or other thing of value, whether belonging to the Ad-
14 ministrators or pledged or otherwise entrusted to the Administrator;

15 (2) with intent to defraud the Administrator or any other body poli-
16 tic or corporate, or any individual, or to deceive any SBA officer, audi-
17 tor, or examiner—

18 (A) makes a false entry in a book, report, or statement of or
19 to the Administrator; or

20 (B) without being duly authorized, draws an order or issues,
21 puts forth, or assigns a note, debenture, bond, or other obligation,
22 or draft, bill of exchange, mortgage, judgment, or decree of judg-
23 ment of the Administrator;

24 (3) with intent to defraud, participates or shares in or receives di-
25 rectly or indirectly any money, profit, property, or benefit through any
26 transaction, loan, commission, contract, or other act of the Adminis-
27 trator; or

28 (4)(A) gives any unauthorized information concerning a future action
29 or plan of the Administrator that might affect the value of a security;
30 or

31 (B) having such knowledge, invests or speculates, directly or indi-
32 rectly, in a security or property of any company or corporation receiv-
33 ing a loan or other assistance from the Administrator;

34 shall be imprisoned not more than 5 years, fined not more than \$10,000,
35 or both.

36 **§ 105103. Concealment, disposal, or conversion of property**

37 A person that, with intent to defraud, knowingly conceals, removes, dis-
38 poses of, or converts to the use of that person or any other person any prop-
39 erty mortgaged or pledged to, or held by, the Administrator—

1 (1) shall be imprisoned not more than 1 year, fined not more than
2 \$1,000, or both; or

3 (2) if the value of the property exceeds \$100, shall be imprisoned
4 not more than 5 years, fined not more than \$5,000, or both.

5 **§ 105104. Misrepresentation of status as small business con-**
6 **cern**

7 (a) OFFENSE.—A person that, in writing, misrepresents the status of a
8 concern or person as a small business concern, qualified HUBZone small
9 business concern, small business concern owned and controlled by socially
10 and economically disadvantaged individuals, or small business concern
11 owned and controlled by women, in order to obtain for that person or any
12 other person—

13 (1) a prime contract to be awarded under chapter 251, 253, 261,
14 or 263;

15 (2) a subcontract to be awarded under chapter 233;

16 (3) a subcontract that is to be included as part or all of a goal con-
17 tained in a subcontracting plan required under section 243103 of this
18 title; or

19 (4) a prime contract or subcontract to be awarded as a result, or
20 in furtherance, of any other provision of Federal law that specifically
21 references chapter 243 for a definition of program eligibility;

22 shall be subject to the penalties described in subsection (b).

23 (b) PENALTIES.—A person that violates subsection (a)—

24 (1) shall be imprisoned not more than 10 years, fined not more than
25 \$500,000, or both;

26 (2) shall be subject to the administrative remedies prescribed by
27 chapter 38 of title 31;

28 (3) shall be subject to suspension and debarment as specified in sub-
29 part 9.4 of title 48, Code of Federal Regulations (or any successor reg-
30 ulation); and

31 (4) shall be ineligible for participation in any program or activity
32 conducted under this subtitle or subtitle II or III for a period not to
33 exceed 3 years.

34 (c) SUSPENSION OR DEBARMENT.—

35 (1) GUIDANCE.—The Administrator shall issue guidance regarding
36 the basis on which a person that violates subsection (a) may be sus-
37 pended or debarred under subsection (b)(3) or under section 105105(3)
38 or 105106(3) of this title.

39 (2) WEBSITE.—The Administrator shall maintain on the SBA web-
40 site—

1 (A) the current standard operating procedures of SBA for sus-
2 pension and debarment; and

3 (B) the name of and contact information for the individual des-
4 ignated by the Administrator as the senior officer responsible for
5 suspension and debarment proceedings.

6 (d) LIMITATION ON LIABILITY.—

7 (1) IN GENERAL.—This section does not apply to any conduct in vio-
8 lation of subsection (a) if the violater acts in good faith reliance on a
9 written advisory opinion issued by a Small Business Development Cen-
10 ter or an entity participating in a procurement technical assistance co-
11 operative agreement program under chapter 142 of title 10.

12 (2) NO OBLIGATION TO ISSUE ADVISORY OPINION.—Nothing in this
13 subtitle or subtitle II obligates a Small Business Development Center
14 or an entity participating in a procurement technical assistance cooper-
15 ative agreement program to issue an advisory opinion, nor shall the is-
16 suance of an advisory opinion by such an entity render the entity liable
17 to the business concern to which the advisory letter is issued if the Ad-
18 ministrator later determines that the business concern is not a small
19 business concern.

20 (3) REJECTION OF ADVISORY OPINION BY SBA GENERAL COUNSEL.—

21 (A) REMISSION TO SBA GENERAL COUNSEL.—On issuance of
22 an advisory opinion under this subsection, the entity that issues
23 the advisory opinion shall remit a copy of the opinion to the Gen-
24 eral Counsel of SBA, who may reject the advisory opinion.

25 (B) NOTIFICATION OF REJECTION.—If the SBA General Coun-
26 sel rejects the advisory opinion, the Administrator shall notify the
27 entity that issued the advisory opinion and the recipient of the ad-
28 visory opinion.

29 (C) NO RELIANCE.—After the recipient of an advisory opinion
30 receives a notification of rejection of the advisory opinion by the
31 SBA General Counsel, the recipient shall not be entitled to rely
32 on the advisory opinion.

33 (4) RULES.—The Administrator shall issue rules defining what con-
34 stitutes an adequate advisory opinion for purposes of this subsection.

35 **§ 105105. False certification of past compliance**

36 A person that falsely certifies past compliance with the requirements of
37 section 233128 of this title—

38 (1) shall be imprisoned not more than 10 years, fined not more than
39 \$500,000 or both;

40 (2) shall be subject to the administrative remedies prescribed by
41 chapter 38 of title 31;

1 (3) shall be subject to suspension and debarment as specified in sub-
 2 part 9.4 of title 48, Code of Federal Regulations (or any successor reg-
 3 ulation) on the basis that the misrepresentation indicates a lack of
 4 business integrity that seriously and directly affects the present respon-
 5 sibility to perform any contract awarded by the Federal Government
 6 or a subcontract under such a contract; and

7 (4) shall be ineligible for participation in any program or activity
 8 conducted under this subtitle or subtitle II or III for a period not to
 9 exceed 3 years.

10 **§ 105106. Subcontracting requirements and limitations**

11 (a) SUBCONTRACTING REQUIREMENT.—A person that fails to supply the
 12 product of a domestic manufacturer or processor that is a small business
 13 concern as required under section 299107(b)(4) of this title—

14 (1) shall be imprisoned not more than 10 years, fined not more than
 15 \$500,000, or both;

16 (2) shall be subject to the administrative remedies prescribed by
 17 chapter 38 of title 31;

18 (3) shall be subject to suspension and debarment as specified in sub-
 19 part 9.4 of title 48, Code of Federal Regulations (or any successor reg-
 20 ulation) on the basis that the misrepresentation indicates a lack of
 21 business integrity that seriously and directly affects the present respon-
 22 sibility to perform any contract awarded by the Federal Government
 23 or a subcontract under such a contract; and

24 (4) shall be ineligible for participation in any program or activity
 25 conducted under this subtitle or subtitle II or III for a period not more
 26 than 3 years.

27 (b) SUBCONTRACTING LIMITATION.—A person that expends on sub-
 28 contractors an amount in excess of the amount permitted under paragraph
 29 (1), (2), or (3) of subsection (b) of section 299107 of this title or in excess
 30 of an amount established by the Administrator under subsection (e) of that
 31 section shall be subject to the penalties prescribed by subsection (a) of this
 32 section, except that the person shall be fined not more than the greater of—

33 (1) \$500,000; or

34 (2) the amount of the excess expenditure.

35 **Chapter 107—Periodic Reports**

Sec.

107101. Comprehensive annual report on the state of small business and on SBA operations.

107102. Annual report on expenditures.

107103. Annual report on secondary market operations.

107104. Annual report on impact of authority to impose secondary market fees.

107105. Annual report on needs of small business concerns owned and controlled by veterans
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107106. Annual report on contract bundling.

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- 107118. Reports on disaster assistance.
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- 107120. Annual report on suspensions and debarments.
- 107121. Annual report on training and travel by Directors of Small and Disadvantaged Business Utilization.
- 107122. Triennial report regarding procurement center representatives and commercial market representatives.
- 107123. Quinquennial report on representation of women.
- 107124. Annual report on mentor-protégé programs.

1 **§ 107101. Comprehensive annual report on the state of small**
2 **business and on SBA operations**

3 (a) IN GENERAL.—As soon as practicable each fiscal year, the Adminis-
4 trator shall submit to the President a comprehensive annual report.

5 (b) CONTENTS.—A report under subsection (a) shall include—

6 (1) a description of the state of small business in the Nation as a
7 whole and in each State;

8 (2) a description of SBA's operations under this subtitle and subtitle
9 II, including the general lending, disaster relief, Government regulation
10 relief, procurement and property disposal, research and development,
11 technical assistance, dissemination of data and information, and other
12 functions under the jurisdiction of SBA during the previous fiscal year;

13 (3) recommendations—

14 (A) for strengthening or improving the functions described in
15 paragraph (2); or

16 (B) when necessary or desirable to implement more effectively
17 congressional policies and proposals, for establishing new or alter-
18 native programs;

19 (4) the names of the business concerns to which contracts are let
20 and for which financing is arranged by the Administrator, including the
21 amounts of the contracts and financings;

22 (5) the proportion of loans and other assistance under subtitle II and
23 provided to minority small business concerns, the goals of the Adminis-
24 trator for the next fiscal year with respect to minority small business
25 concerns, and recommendations for improving assistance to minority
26 small business concerns under subtitle II; and

27 (6)(A) a full and detailed account of operations under subtitle III
28 that—

1 (i) discloses the amount of losses sustained by the Government
2 as a result of such operations during the preceding fiscal year; and

3 (ii) includes an estimate of the total losses that the Government
4 can reasonably expect to incur as a result of such operations dur-
5 ing the then-current fiscal year;

6 (B) full and detailed accounts relating to—

7 (i) the Administrator's recommendations with respect to the fea-
8 sibility and organization of a small business capital bank to en-
9 courage private financing of small business investment companies
10 (as defined in section 301101 of this title) to replace Government
11 financing of small business investment companies;

12 (ii) the Administrator's plans to ensure the provision of small
13 business investment company financing to all areas of the country
14 and to all eligible small business concerns, including steps taken
15 to accomplish that;

16 (iii) steps taken by the Administrator to maximize recoupment
17 of Government funds incident to the inauguration and administra-
18 tion of the small business investment company program and to en-
19 sure compliance with statutory and regulatory standards relating
20 to the small business investment company program;

21 (iv) an accounting by the Director of the Office of Management
22 and Budget with respect to Federal expenditures to business by
23 executive agencies, specifying the proportion of those expenditures
24 going to business concerns falling above and below small business
25 size standards applicable to small business investment companies;

26 (v) an accounting by the Secretary of the Treasury with respect
27 to tax revenues accruing to the Government from business con-
28 cerns, specifying the source of those revenues by concerns falling
29 above and below the small business size standards applicable to
30 small business investment companies;

31 (vi) an accounting by the Secretary of the Treasury with respect
32 to tax losses and increased tax revenues related to small business
33 investment company financing of both individual and corporate
34 business taxpayers;

35 (vii) recommendations of the Secretary of the Treasury with re-
36 spect to additional tax incentives to improve and facilitate the op-
37 erations of small business investment companies and to encourage
38 the use of their financing facilities by eligible small business con-
39 cerns;

40 (viii) a report from the Securities and Exchange Commission
41 enumerating actions undertaken by the Securities and Exchange

1 Commission to simplify and minimize the regulatory requirements
2 governing small business investment companies under the Federal
3 securities laws and to eliminate overlapping regulation and juris-
4 diction as between the Securities and Exchange Commission, SBA,
5 and other agencies of the executive branch;

6 (ix) a report from the Securities and Exchange Commission
7 with respect to actions taken to facilitate and stabilize the access
8 of small business concerns (as defined in section 301101 of this
9 title) to the securities markets; and

10 (x) actions undertaken by the Securities and Exchange Commis-
11 sion to simplify compliance by small business investment compa-
12 nies with the requirements of Investment Company Act of 1940
13 (15 U.S.C. 80a-1 et seq.) and to facilitate the election to be taxed
14 as regulated investment companies under section 851 of the Inter-
15 nal Revenue Code of 1986 (26 U.S.C. 851); and

16 (C) a full and detailed description or account relating to—

17 (i) the number of small business investment companies the Ad-
18 ministrator licensed under subtitle III, the number of licensees (as
19 defined in section 301101 of this title) that have been placed in
20 liquidation, and the number of licensees that have surrendered
21 their licenses in the previous year, identifying the amount of lever-
22 age (as defined in section 301101 of this title) each has received
23 and the type of leverage instruments each has used;

24 (ii) the amount of leverage that each licensee received in the
25 previous year and the types of leverage instruments each licensee
26 used;

27 (iii) for each type of financing instrument, the sizes, geographic
28 locations, and other characteristics of the small business invest-
29 ment companies using the financing instrument, including the ex-
30 tent to which small business investment companies have used the
31 leverage from each instrument to make small business loans, eq-
32 uity investments, or both; and

33 (iv) the frequency with which each type of investment instru-
34 ment has been used in the current year and a comparison of the
35 current year with previous years.

36 **§ 107102. Annual report on expenditures**

37 (a) IN GENERAL.—As soon as practicable each fiscal year, the Adminis-
38 trator shall submit to the President a report showing as accurately as pos-
39 sible for the fiscal year the amount of funds appropriated to SBA that the
40 Administrator has expended in the conduct of each of the principal activities

1 of SBA such as lending, procurement contracting, and providing technical
2 and managerial aids.

3 (b) CONTENTS.—A report under subsection (a) shall disclose, separately
4 for each type of loan made under sections 205103 to 205109 of this title
5 and separately for all other loan programs, the number and amount of
6 loans, the number of applications, the total amount applied for, and the
7 number and amount of defaults for each type of equipment or service for
8 which loans are authorized by subtitle II.

9 **§ 107103. Annual report on secondary market operations**

10 (a) IN GENERAL.—Not later than March 31 of each year, the Adminis-
11 trator shall submit to the Committee on Small Business and Entrepreneur-
12 ship of the Senate and the Committee on Small Business of the House of
13 Representatives a report on the secondary market operations during the
14 preceding calendar year.

15 (b) CONTENTS.—A report under subsection (a) shall include—

16 (1) the number and the total dollar amount of loans sold into the
17 secondary market and the distribution of such loans by size of loan,
18 size of lender, geographic location of lender, interest rate, maturity,
19 lender servicing fees, whether the rate is fixed or variable, and pre-
20 mium paid;

21 (2) the number and dollar amount of loans resold in the secondary
22 market with a distribution by size of loan, interest rate, and premiums;

23 (3) the number and total dollar amount of pools formed;

24 (4) the number and total dollar amount of loans in each pool;

25 (5) the dollar amount, interest rate, and terms on each loan in each
26 pool and whether the rate is fixed or variable;

27 (6) the number, face value, interest rate, and terms of the trust cer-
28 tificates issued for each pool;

29 (7) to the maximum extent possible, the use by the lender of the pro-
30 ceeds of sales of loans in the secondary market for additional lending
31 to small business concerns; and

32 (8) an analysis of the information reported under paragraphs (1) to
33 (7) to assess the access of small business concerns to capital at reason-
34 able rates and terms as a result of secondary market operations.

35 **§ 107104. Annual report on impact of authority to impose**
36 **secondary market fees**

37 (a) DEFINITION OF SMALL BUSINESS CONCERN OWNED AND CON-
38 TROLLED BY MINORITIES.—In this section, the term “small business con-
39 cerns owned and controlled by minorities” includes a small business concern
40 that is owned and controlled by individuals belonging to 1 of the designated

1 groups listed in subclause (1)(B) of the contract clause described in section
2 243101(e) of this title.

3 (b) STUDY, MONITORING, AND EVALUATION.—The Administrator shall
4 study, monitor, and evaluate the impact of subparagraphs (A) to (E) of sec-
5 tion 103202(d)(5) of this title on—

6 (1) the ability of small business concerns owned and controlled by
7 minorities, small business concerns owned and controlled by women,
8 and other small business concerns to obtain financing; and

9 (2) the effectiveness, viability, and growth of the secondary market
10 authorized by section 103202(e) of this title.

11 (c) ANNUAL REPORTS.—

12 (1) IN GENERAL.—The Administrator shall annually submit to the
13 Committee on Small Business and Entrepreneurship of the Senate and
14 the Committee on Small Business of the House of Representatives a
15 report containing the Administrator’s findings and recommendations on
16 the impact described in subsection (b), specifically including changes in
17 the interest rates on financings provided to small business concerns
18 owned and controlled by minorities, small business concerns owned and
19 controlled by women, and other small business concerns through the
20 use of the secondary market.

21 (2) FINDINGS AND RECOMMENDATIONS.—The report under para-
22 graph (1) shall state findings and recommendations separately for the
23 ethnic and gender components of the small business concerns described
24 in paragraph (1).

25 **§ 107105. Annual report on needs of small business concerns**
26 **owned and controlled by veterans and small busi-**
27 **ness concerns owned and controlled by service-**
28 **disabled veterans**

29 (a) IN GENERAL.—The Administrator shall annually submit to the Com-
30 mittee on Small Business and Entrepreneurship and Committee on Veterans
31 Affairs of the Senate and the Committee on Small Business and Committee
32 on Veterans Affairs of the House of Representatives a report on the needs
33 of small business concerns owned and controlled by veterans and small busi-
34 ness concerns owned and controlled by service-disabled veterans.

35 (b) CONTENTS.—A report under subsection (a) shall include information
36 on—

37 (1)(A) the availability of SBA programs for small business concerns
38 owned and controlled by veterans and small business concerns owned
39 and controlled by service-disabled veterans; and

40 (B) the degree of utilization of those programs by small business
41 concerns owned and controlled by veterans and small business concerns

1 owned and controlled by service-disabled veterans during the preceding
2 12-month period, including statistical information on such utilization as
3 compared with the small business community as a whole;

4 (2) the percentage and dollar value of Federal contracts awarded to
5 small business concerns owned and controlled by veterans and small
6 business concerns owned and controlled by service-disabled veterans
7 during the preceding 12-month period, based on the data collected
8 under section 275113 of this title; and

9 (3) proposals to improve the access of small business concerns owned
10 and controlled by veterans and small business concerns owned and con-
11 trolled by service-disabled veterans to the assistance made available by
12 the United States.

13 **§ 107106. Annual report on contract bundling**

14 (a) IN GENERAL.—In March of each year, using information maintained
15 under section 251105(e) of this title, the Administrator shall submit to the
16 Committee on Small Business and Entrepreneurship of the Senate and the
17 Committee on Small Business of the House of Representatives a report on
18 contract bundling.

19 (b) CONTENTS.—A report under subsection (a) shall include—

20 (1) information on the number (arranged by industrial classification)
21 of small business concerns displaced as prime contractors as a result
22 of the award of bundled contracts by Federal agencies; and

23 (2) a description of the activities with respect to previously bundled
24 contracts of each Federal agency during the preceding year, includ-
25 ing—

26 (A) information on the number and total dollar amount of all
27 contract requirements that were bundled; and

28 (B) with respect to each bundled contract, information on—

29 (i) the justification for the bundling of contract require-
30 ments;

31 (ii) the cost savings realized by bundling the contract re-
32 quirements over the life of the contract;

33 (iii) the extent to which maintaining the bundled status of
34 contract requirements is projected to result in continued cost
35 savings;

36 (iv) the extent to which the bundling of contract require-
37 ments complied with the procuring agency's small business
38 subcontracting plan, including the total dollar value awarded
39 to small business concerns as subcontractors and the total
40 dollar value previously awarded to small business concerns as
41 prime contractors; and

1 (v) the impact of the bundling of contract requirements on
2 small business concerns unable to compete as prime contrac-
3 tors for the consolidated requirements and on the industries
4 of such small business concerns, including a description of
5 any changes to the proportion of any such industry that is
6 composed of small business concerns.

7 **§ 107107. Annual report on business development program**

8 (a) IN GENERAL.—Not later than April 30 of each year, the Adminis-
9 trator shall submit to Congress a report on the business development pro-
10 gram.

11 (b) CONTENTS.—

12 (1) NET WORTH OF PARTICIPATING INDIVIDUALS.—A report under
13 subsection (a) shall disclose—

14 (A) the average personal net worth of individuals who own and
15 control small business concerns that were initially certified for par-
16 ticipation in the business development program during the imme-
17 diately preceding fiscal year; and

18 (B) the dollar distribution of net worths, at \$50,000 increments,
19 of all such individuals determined to be socially and economically
20 disadvantaged.

21 (2) DESCRIPTION AND ESTIMATE OF BENEFITS AND COSTS.—A re-
22 port under subsection (a) shall include a description and estimate of
23 the benefits and costs that have accrued to the economy and the Gov-
24 ernment in the immediately preceding fiscal year due to the operations
25 of the program participants that were performing contracts awarded
26 under the business development program.

27 (3) PROGRAM PARTICIPANTS EXITING THE PROGRAM.—

28 (A) IN GENERAL.—A report under subsection (a) shall include
29 a compilation and evaluation of the former program participants
30 that exited the program during the immediately preceding 3 fiscal
31 years.

32 (B) CONTENTS.—The compilation and evaluation under sub-
33 paragraph (A) shall—

34 (i)(I) disclose the number of former program participants
35 that are actively engaged in business operations; and

36 (II) for those former program participants, separately de-
37 tail the benefits and costs that have accrued to the economy
38 during the immediately preceding fiscal year due to the oper-
39 ations of the former program participants;

1 (ii)(I) disclose the number of former program participants
2 that have ceased or substantially curtailed business oper-
3 ations; and

4 (II) describe the reasons for the cessation or curtailment;
5 and

6 (iii) disclose the number of former program participants
7 that have been acquired by other business concerns or organi-
8 zations owned and controlled by other than socially and eco-
9 nomically disadvantaged individuals.

10 (4) LIST OF PROGRAM PARTICIPANTS.—A report under subsection
11 (a) shall include a list of all program participants that participated in
12 the program during the preceding fiscal year that discloses, by State
13 and by SBA region, for each program participant—

14 (A) the name of the program participant;

15 (B) the race or ethnicity and gender of the disadvantaged own-
16 ers;

17 (C) the dollar value of all contracts received in the preceding
18 year;

19 (D) the dollar amount of advance payments received under con-
20 tracts awarded under the business development program; and

21 (E) a description (including (if appropriate) an estimate of the
22 dollar value) of all benefits received under sections 205111 and
23 233127 of this title during the preceding year.

24 (5) CONTRACT AND OPTION VALUE.—A report under subsection (a)
25 shall include the total dollar value of contracts and options awarded
26 under this chapter during the preceding fiscal year—

27 (A) expressed as an absolute amount;

28 (B) expressed as a percentage of total sales—

29 (i) of all program participants during that year; and

30 (ii) of program participants in each of the 9 years of pro-
31 gram participation; and

32 (C) expressed, at such dollar increments as the Administrator
33 considers appropriate, for each 6-digit North American Industry
34 Classification System code under which the contracts and options
35 were classified.

36 (6) ADDITIONAL RESOURCES OR AUTHORITIES.—A report under sub-
37 section (a) shall include a description of such additional resources or
38 program authorities as may be required to provide the types of services
39 needed over the next 2-year period to service the expected portfolio of
40 program participants.

1 **§ 107108. Annual report on contract participation goals**

2 (a) REPORTING BY FEDERAL AGENCIES.—At the end of each fiscal year,
3 the head of a Federal agency shall submit to the Administrator a report
4 that—

5 (1) describes the extent of participation in procurement contracts of
6 the Federal agency during the fiscal year by—

7 (A) small business concerns (excluding categories of small busi-
8 ness concern listed in subparagraphs (B) through (E));

9 (B) small business concerns owned and controlled by veterans
10 (including small business concerns owned and controlled by serv-
11 ice-disabled veterans);

12 (C) qualified HUBZone small business concerns;

13 (D) small business concerns owned and controlled by socially
14 and economically disadvantaged individuals; and

15 (E) small business concerns owned and controlled by women;

16 (2) states whether the Federal agency achieved the goals established
17 for the Federal agency under subsection (b) of section 251106 of this
18 title for the fiscal year; and

19 (3) describes any justifications for failure to meet the goals.

20 (b) REPORT BY THE ADMINISTRATOR.—Not later than 60 days after all
21 Federal agencies have submitted their reports under subsection (a) with re-
22 spect to a fiscal year, the Administrator shall submit to the President and
23 Congress and make available on a public website a report that—

24 (1) includes a copy of each report submitted to the Administrator
25 under subsection (a);

26 (2) makes a determination whether each goal established by the
27 President under section 251106(a) of this title for the fiscal year was
28 achieved;

29 (3) makes a determination whether each goal established by the head
30 of a Federal agency under section 251106(b) of this title for the fiscal
31 year was achieved;

32 (4)(A) states the reasons for any failure to achieve a goal established
33 under subsection (a) or (b) of section 251106 of this title for the fiscal
34 year; and

35 (B) describes actions planned by the Federal agency in question to
36 address the failure under subsection (b) of section 251106 of this title,
37 including the Administrator's comments and recommendations on the
38 proposed remediation plan;

39 (5) for the Federal Government and each Federal agency, includes
40 an analysis of the number and dollar amount of prime contracts award-
41 ed during the fiscal year to—

- 1 (A) small business concerns (excluding categories of small busi-
2 ness concern listed in subparagraphs (B) through (E))—
3 (i) in the aggregate;
4 (ii) through sole source contracts;
5 (iii) through competitions restricted to small business con-
6 cerns; and
7 (iv) through unrestricted competition;
- 8 (B) small business concerns owned and controlled by service-dis-
9 abled veterans—
10 (i) in the aggregate;
11 (ii) through sole source contracts;
12 (iii) through competitions restricted to small business con-
13 cerns;
14 (iv) through competitions restricted to small business con-
15 cerns owned and controlled by service-disabled veterans; and
16 (v) through unrestricted competition;
- 17 (C) qualified HUBZone small business concerns—
18 (i) in the aggregate;
19 (ii) through sole source contracts;
20 (iii) through competitions restricted to small business con-
21 cerns;
22 (iv) through competitions restricted to qualified HUBZone
23 small business concerns;
24 (v) through unrestricted competition in which a price eval-
25 uation preference was used; and
26 (vi) through unrestricted competition in which a price eval-
27 uation preference was not used;
- 28 (D)(i) small business concerns owned and controlled by socially
29 and economically disadvantaged individuals—
30 (I) in the aggregate;
31 (II) through sole source contracts;
32 (III) through competitions restricted to small business con-
33 cerns;
34 (IV) through competitions restricted to small business con-
35 cerns owned and controlled by socially and economically dis-
36 advantaged individuals;
37 (V) through unrestricted competition; and
38 (VI) by reason of that concern's certification as a small
39 business owned and controlled by socially and economically
40 disadvantaged individuals;

- 1 (ii) small business concerns owned by an Indian tribe (as de-
2 fined in section 231101 of this title) other than an Alaska Native
3 Corporation—
- 4 (I) in the aggregate;
5 (II) through sole source contracts;
6 (III) through competitions restricted to small business con-
7 cerns;
8 (IV) through competitions restricted to small business con-
9 cerns owned and controlled by socially and economically dis-
10 advantaged individuals; and
11 (V) through unrestricted competition;
- 12 (iii) small business concerns owned by a Native Hawaiian Orga-
13 nization—
- 14 (I) in the aggregate;
15 (II) through sole source contracts;
16 (III) through competitions restricted to small business con-
17 cerns;
18 (IV) through competitions restricted to small business con-
19 cerns owned and controlled by socially and economically dis-
20 advantaged individuals; and
21 (V) through unrestricted competition;
- 22 (iv) small business concerns owned by an Alaska Native Cor-
23 poration—
- 24 (I) in the aggregate;
25 (II) through sole source contracts;
26 (III) through competitions restricted to small business con-
27 cerns;
28 (IV) through competitions restricted to small business con-
29 cerns owned and controlled by socially and economically dis-
30 advantaged individuals; and
31 (V) through unrestricted competition; and
- 32 (E) small business concerns owned and controlled by women—
- 33 (i) in the aggregate;
34 (ii) through competitions restricted to small business con-
35 cerns;
36 (iii) through competitions restricted using the authority
37 under section 257102 of this title;
38 (iv) through competitions restricted using the authority
39 under subsection (a) of section 257102 of this title and in
40 which the waiver authority under subsection (b) of that sec-
41 tion was used; and

- 1 (v) through unrestricted competition; and
- 2 (6) for the Federal Government, to the extent that the information
- 3 is publicly available through data systems developed under the Federal
- 4 Funding Accountability and Transparency Act of 2006 (Public Law
- 5 109–282, 31 U.S.C. 6101 note) or is otherwise available under sub-
- 6 section (c), the number, dollar amount, and distribution with respect
- 7 to the North American Industry Classification System of subcontracts
- 8 awarded during the fiscal year to—
- 9 (A) small business concerns (excluding categories of small busi-
- 10 ness concern listed in subparagraphs (B) through (E));
- 11 (B) small business concerns owned and controlled by service-dis-
- 12 abled veterans (including small business concerns owned and con-
- 13 trolled by service-disabled veterans);
- 14 (C) qualified HUBZone small business concerns;
- 15 (D) small business concerns owned and controlled by socially
- 16 and economically disadvantaged individuals; and
- 17 (E) small business concerns owned and controlled by women.

18 (c) ACCESS TO DATA.—

19 (1) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the imple-

20 mentation of this section, the Administrator shall have access to infor-

21 mation collected through the Federal Procurement Data System, Fed-

22 eral Subcontracting Reporting System, or any new or successor system.

23 (2) AGENCY PROCUREMENT DATA SOURCES.—To assist in the imple-

24 mentation of this section, the head of a contracting agency shall pro-

25 vide, on request of the Administrator, procurement information col-

26 lected through agency data collection sources in existence at the time

27 of the request. A contracting agency shall not be required to establish

28 a new data collection system to provide such data.

29 **§ 107109. Annual report on cost savings from procurement**

30 **center representatives**

31 The Administrator shall annually submit to Congress a report that—

- 32 (1) describes the cost savings achieved during the year covered by
- 33 the report through the efforts of procurement center representatives as-
- 34 signed to major procurement centers under section 251110 of this title;
- 35 (2) contains an evaluation of the extent to which competition has
- 36 been increased as a result of those efforts; and
- 37 (3) includes such other information relating to procurement center
- 38 representatives as the Administrator considers appropriate.

39 **§ 107110. Reports on SBIR programs, STTR programs, and**

40 **the FAST program**

41 (a) SBIR PROGRAMS AND STTR PROGRAMS.—

1 (1) ADMINISTRATOR.—

2 (A) IN GENERAL.—The Administrator, not less than annually,
3 shall submit to the Committee on Small Business and Entrepre-
4 neurship of the Senate and the Committee on Science and Com-
5 mittee on Small Business of the House of Representatives a report
6 on the SBIR programs and STTR programs of the Federal agen-
7 cies and the Administrator's information and monitoring efforts
8 relating to the SBIR programs and STTR programs.

9 (B) CONTENTS.—A report under subparagraph (A) shall in-
10 clude—

11 (i) the data on output and outcomes collected under sec-
12 tions 263102(a)(8) and 263202(9) of this title;

13 (ii) the number of proposals received from, and the number
14 and total amount of awards to, HUBZone small business con-
15 cerns and firms with venture capital, hedge fund, or private
16 equity firm investment (including those that are majority-
17 owned by multiple venture capital operating companies, hedge
18 funds, or private equity firms) under each of the SBIR pro-
19 grams and STTR programs;

20 (iii) a description of the extent to which each Federal agen-
21 cy is increasing outreach and awards to firms owned and con-
22 trolled by women or by socially or economically disadvantaged
23 individuals under each of the SBIR programs and STTR pro-
24 grams;

25 (iv) general information about the implementation of, and
26 compliance with the allocation of funds required under, sec-
27 tion 263109 of this title for firms owned that are majority-
28 owned by venture capital operating companies, hedge funds,
29 or private equity firms and participating in the SBIR pro-
30 gram;

31 (v) a detailed description of appeals of phase III awards
32 and notices of noncompliance with the SBIR policy directive
33 and the STTR policy directive filed by the Administrator with
34 Federal agencies;

35 (vi) an accounting of funds, initiatives, and outcomes under
36 the commercialization readiness program under section
37 263314(a) of this title;

38 (vii) a description of the extent to which Federal agencies
39 are providing in a timely manner information needed to main-
40 tain the database under section 263301 of this title;

41 (viii) for each phase III award—

1 (I) the name of the agency or component of the agen-
2 cy or the non-Federal source of capital that made the
3 phase III award;

4 (II) the name of the small business concern or individ-
5 ual that received the phase III award; and

6 (III) the dollar amount of the phase III award;

7 (ix) the manufacturing activity information contained in re-
8 ports under paragraph (3);

9 (x) any data submitted under section 263109(d) of this
10 title and a discussion of the compliance of each Federal agen-
11 cy that makes an award under this section 263109 of this
12 title during the fiscal year with the maximum percentages
13 under 263109(a) of this title;

14 (xi) the information on award amounts exceeding guidelines
15 described in section 263308(b) of this title;

16 (xii) the information on technology transition submitted
17 under section 263314(a)(6)(C) of this title; and

18 (xiii) the information on timing of final decisions on pro-
19 posals and releases of funding described in section 263316 of
20 this title.

21 (2) SBIR AGENCY HEADS AND STTR AGENCY HEADS.—

22 (A) METRICS.—The head of an SBIR agency or STTR agency
23 shall develop metrics to evaluate the effectiveness and the benefit
24 to the people of the United States of the SBIR program and the
25 STTR program of the Federal agency that—

26 (i) are science-based and statistically driven;

27 (ii) reflect the mission of the Federal agency; and

28 (iii) include factors relating to the economic impact of the
29 SBIR program or STTR program.

30 (B) EVALUATION.—The head of an SBIR agency or STTR
31 agency shall conduct an annual evaluation using the metrics devel-
32 oped under subparagraph (A) of—

33 (i) the SBIR program and STTR program of the SBIR
34 agency or STTR agency; and

35 (ii) the benefits to the people of the United States of the
36 SBIR program and the STTR program of the Federal agen-
37 cy.

38 (C) REPORT.—

39 (i) IN GENERAL.—The head of an SBIR agency or STTR
40 agency shall submit to the Committee on Small Business and
41 Entrepreneurship of the Senate and the Committee on Small

1 Business and Committee on Science, Space, and Technology
2 of the House of Representatives and to the Administrator an
3 annual report describing in detail the results of an evaluation
4 conducted under subparagraph (B).

5 (ii) PUBLIC AVAILABILITY OF REPORT.—The head of an
6 SBIR agency or STTR agency shall make a report submitted
7 under clause (i) available to the public online.

8 (3) HEADS OF AGENCIES THAT MAKE MORE THAN \$50,000,000 IN
9 AWARDS.—Not later than October 1 of each year, the head of a Fed-
10 eral agency that makes more than \$50,000,000 in awards under the
11 SBIR program and STTR program of the agency combined shall sub-
12 mit to the Administrator, for inclusion in the annual report under
13 paragraph (1), information that includes—

14 (A) a description of efforts undertaken by the agency head to
15 enhance United States manufacturing activities;

16 (B) a comprehensive description of the actions undertaken each
17 year by the agency head in carrying out the SBIR program or
18 STTR program of the agency in support of Executive Order
19 13329 (69 Fed. Reg. 9181);

20 (C) an assessment of the effectiveness of the actions described
21 in subparagraph (B) at enhancing the research and development
22 of United States manufacturing technologies and processes;

23 (D) a description of efforts by vendors selected to provide dis-
24 cretionary technical assistance under section 263313 of this title
25 to help small business concerns that participate in the SBIR pro-
26 gram or STTR program manufacture in the United States; and

27 (E) recommendations that the program managers of the SBIR
28 program or STTR program consider appropriate for additional ac-
29 tions to increase the effectiveness of enhancing manufacturing ac-
30 tivities.

31 (4) INSPECTORS GENERAL.—Not later than October 1 of each year,
32 the Inspector General of an SBIR participating agency or STTR par-
33 ticipating agency shall submit to the Committee on Small Business and
34 Entrepreneurship of the Senate and the Committee on Small Business
35 and the Committee on Science, Space, and Technology of the House
36 of Representatives a report that—

37 (A) states the number of cases referred to the Inspector General
38 in the preceding year that related to fraud, waste, or abuse with
39 respect to the SBIR program or STTR program;

1 (B) describes the actions taken in each case referred to in sub-
2 paragraph (A) if fraud, waste, or abuse was determined to have
3 occurred;

4 (C) if no action was taken in a case referred to subparagraph
5 (A) and fraud, waste, or abuse was determined to have occurred,
6 states the justification for not taking taken; and

7 (D) makes an accounting of the funds used to address fraud,
8 waste, and abuse, including a description of personnel and re-
9 sources funded and funds that were recovered or saved.

10 (5) COMPTROLLER GENERAL.—

11 (A) IMPACT OF REQUIREMENTS RELATING TO VENTURE CAP-
12 ITAL OPERATING COMPANY, HEDGE FUND, AND PRIVATE EQUITY
13 FIRM INVOLVEMENT.—Not later than December 31, 2014, and
14 every 3 years thereafter, the Comptroller General of the United
15 States shall—

16 (i) conduct a study of the impact of requirements relating
17 to venture capital operating company, hedge fund, and pri-
18 vate equity firm involvement under this division; and

19 (ii) submit to Congress a report regarding the study con-
20 ducted under clause (i).

21 (B) FRAUD, WASTE, AND ABUSE.—To establish a baseline of
22 changes made to the program to fight fraud, waste, and abuse,
23 and, every 4 years, to evaluate the effectiveness of the agency
24 strategies, the Comptroller General of the United States shall—

25 (i) conduct a study that evaluates—

26 (I) the implementation by each SBIR participating
27 agency and STTR participating agency of the amend-
28 ments to the SBIR policy directives and the STTR policy
29 directive made pursuant to section 263318 of this title;

30 (II) the effectiveness of the management information
31 system of each SBIR participating agency and STTR
32 participating agency in identifying duplicative SBIR
33 projects and STTR projects;

34 (III) the effectiveness of the risk management strate-
35 gies of each SBIR participating agency and STTR par-
36 ticipating agency in identifying areas of the SBIR pro-
37 gram or the STTR program that are at high risk for
38 fraud;

39 (IV) technological tools that may be used to detect
40 patterns of behavior that may indicate fraud by appli-
41 cants to the SBIR program or the STTR program;

1 (V) the success of each SBIR participating agency and
2 STTR participating agency in reducing fraud, waste, and
3 abuse in the SBIR program or the STTR program of the
4 Federal agency;

5 (VI) the extent to which the Inspector General of each
6 SBIR participating agency and STTR participating
7 agency effectively conducts investigations, audits, inspec-
8 tions, and outreach relating to the SBIR program and
9 STTR program of the SBIR participating agency or
10 STTR participating agency; and

11 (VII) the effectiveness of the Government and public
12 databases described in section 263301 of this title in re-
13 ducing vulnerabilities of the SBIR program and STTR
14 program to fraud, waste, and abuse, particularly with re-
15 spect to Federal agencies funding duplicative proposals
16 and business concerns falsifying information in propos-
17 als; and

18 (ii) submit to the Committee on Small Business and Entre-
19 preneurship of the Senate, the Committee on Small Business
20 and Committee on Science, Space, and Technology of the
21 House of Representatives, and the head of each SBIR partici-
22 pating agency and STTR participating agency a report on the
23 results of the study conducted under clause (i).

24 (6) NATIONAL RESEARCH COUNCIL.—

25 (A) STUDY AND RECOMMENDATIONS.—The head of each agency
26 with a budget of more than \$50,000,000 for its SBIR program
27 for fiscal year 1999, in consultation with the Administrator, shall
28 cooperatively enter into an agreement with the National Academy
29 of Sciences for the National Research Council to—

30 (i) conduct a comprehensive study of how the SBIR pro-
31 gram has stimulated technological innovation and used small
32 businesses to meet Federal research and development needs,
33 including—

34 (I) a review of the value to the Federal research agen-
35 cies of the research projects being conducted under the
36 SBIR program, and of the quality of research being con-
37 ducted by small businesses participating under the SBIR
38 program, including a comparison of the value of projects
39 conducted under the SBIR program with those funded
40 by other Federal research and development expenditures;

1 (II) to the extent practicable, an evaluation of the eco-
2 nomic benefits achieved by the SBIR program, including
3 the economic rate of return, and a comparison of the
4 economic benefits, including the economic rate of return,
5 achieved by the SBIR program with the economic bene-
6 fits, including the economic rate of return, of other Fed-
7 eral research and development expenditures;

8 (III) an evaluation of the noneconomic benefits
9 achieved by the SBIR program over the life of the pro-
10 gram;

11 (IV) a comparison of the allocation for fiscal year
12 2000 of Federal research and development funds to
13 small businesses with that allocation for fiscal year 1983,
14 and an analysis of the factors that have contributed to
15 the allocation; and

16 (V) an analysis of whether Federal agencies, in fulfill-
17 ing their procurement needs, are making sufficient effort
18 to use small businesses that have completed a phase II
19 award under the SBIR program; and

20 (ii) make recommendations with respect to—

21 (I) measures of outcomes for strategic plans submitted
22 under section 306 of title 5 and performance plans sub-
23 mitted under section 1115 of title 31 of each SBIR par-
24 ticipating agency;

25 (II) whether companies that can demonstrate project
26 feasibility, but that have not received a phase I award,
27 should be eligible for phase II awards, and the potential
28 impact of such awards on the competitive selection pro-
29 cess of the program;

30 (III) whether the Federal Government should be per-
31 mitted to recoup some or all of its expenses if a control-
32 ling interest in a company receiving an SBIR award is
33 sold to a foreign company or to a company that is not
34 a small business concern;

35 (IV) how to increase the use by the Federal Govern-
36 ment in its programs and procurements of technology-
37 oriented small business concerns; and

38 (V) improvements to the SBIR program, if any are
39 considered appropriate.

40 (B) PARTICIPATION BY SMALL BUSINESS CONCERNS.—

1 (i) IN GENERAL.—In a manner consistent with law and
2 with National Research Council study guidelines and proce-
3 dures, knowledgeable individuals from small business concerns
4 with experience in the SBIR program shall be included—

5 (I) in any panel established by the National Research
6 Council for the purpose of performing the study con-
7 ducted under this paragraph; and

8 (II) among those who are asked by the National Re-
9 search Council to peer review the study.

10 (ii) CONSULTATION.—To ensure that the concerns of small
11 business concerns are appropriately considered under this
12 subparagraph, the National Research Council shall consult
13 with and consider the views of the Office of Technology and
14 the Office of Advocacy of the SBA and other interested par-
15 ties, including entities, organizations, and individuals actively
16 engaged in enhancing or developing the technological capabili-
17 ties of small business concerns.

18 (C) REPORT.—The National Research Council shall submit to
19 the heads of agencies entering into an agreement under this para-
20 graph and to the Committee on Science, Space, and Technology
21 and Committee on Small Business of the House of Representatives
22 and the Committee on Small Business and Entrepreneurship of
23 the Senate—

24 (i) not later than December 21, 2003, a report including
25 the results of the study conducted under subparagraph (A)(i)
26 and recommendations made under subparagraph (A)(ii); and

27 (ii) not later than December 21, 2006, an update of the
28 report.

29 (D) EXTENSIONS AND ENHANCEMENTS OF AUTHORITY.—

30 (i) IN GENERAL.—In consultation with the Administrator,
31 the head of each agency with a budget of more than
32 \$50,000,000 for its SBIR program for fiscal year 1999 shall
33 cooperatively enter into an agreement with the National
34 Academy of Sciences for the National Research Council to,
35 not later than December 31, 2014, and every 4 years there-
36 after—

37 (I) continue the most recent study under this para-
38 graph relating to the issues described in subclauses (I),
39 (II), (III), and (V) of subparagraph (A)(i);

1 (II) conduct a comprehensive study of how the STTR
2 program has stimulated technological innovation and
3 technology transfer, including—

4 (aa) a review of the collaborations created be-
5 tween small business concerns and research institu-
6 tions, including an evaluation of the effectiveness of
7 the STTR program in stimulating new collabora-
8 tions and any obstacles that may prevent or inhibit
9 the creation of such collaborations;

10 (bb) an evaluation of the effectiveness of the
11 STTR program at transferring technology and ca-
12 pabilities developed through Federal funding;

13 (cc) to the extent practicable, an evaluation of the
14 economic benefits achieved by the STTR program,
15 including the economic rate of return;

16 (dd) an analysis of how Federal agencies are
17 using small business concerns that have completed
18 phase II under the STTR program to fulfill their
19 procurement needs;

20 (ee) an analysis of whether additional funds could
21 be employed effectively by the STTR program; and

22 (ff) an assessment of the systems and minimum
23 performance standards relating to commercialization
24 success established under section 263321 of this
25 title;

26 (III) make recommendations with respect to the issues
27 described in subclauses (I), (IV), and (V) of subpara-
28 graph (A)(ii) and subclause (II) of this clause; and

29 (IV) estimate, to the extent practicable, the number of
30 jobs created by the SBIR program or STTR program of
31 the agency.

32 (ii) CONSULTATION.—An agreement under clause (i) shall
33 require the National Research Council to ensure that there is
34 participation by and consultation with small business con-
35 cerns, the Administrator, and other interested parties as de-
36 scribed in subparagraph (B).

37 (iii) REPORTING.—An agreement under clause (i) shall re-
38 quire that not later than December 31, 2015, and every 4
39 years thereafter, the National Research Council shall submit
40 to the head of the agency entering into the agreement, the
41 Committee on Small Business and Entrepreneurship of the

1 Senate, and the Committee on Small Business and the Com-
2 mittee on Science, Space, and Technology of the House of
3 Representatives a report regarding the study conducted under
4 clause (i) and containing the recommendations described in
5 clause (i).

6 (b) FAST PROGRAM.—The Administrator shall annually submit to the
7 Committee on Small Business and Entrepreneurship of the Senate and the
8 Committee on Science and Committee on Small Business of the House of
9 Representatives a report regarding—

10 (1) the number and amount of awards provided and cooperative
11 agreements entered into under the FAST program during the preced-
12 ing year;

13 (2) a list of recipients under section 263305 of this title, including
14 their location and the activities being performed with the awards made
15 or under the cooperative agreements entered into; and

16 (3) the mentoring networks and the mentoring database, as provided
17 for under section 263305(f) of this title, including—

18 (A) the status of the inclusion of mentoring information in the
19 database required by section 263301 of this title; and

20 (B) the status of the implementation and description of the
21 usage of the mentoring networks.

22 **§ 107111. Annual report on women’s business center pro-**
23 **gram**

24 (a) IN GENERAL.—The Administrator shall annually submit to the Com-
25 mittee on Small Business and Entrepreneurship of the Senate and the Com-
26 mittee on Small Business of the House of Representatives a report on the
27 effectiveness of all projects conducted under chapter 273.

28 (b) CONTENTS.—A report under subsection (a) shall include information
29 concerning, with respect to each women’s business center—

30 (1) the number of individuals receiving assistance;

31 (2) the number of startup business concerns formed;

32 (3) the gross receipts of assisted business concerns;

33 (4) the employment increases or decreases of assisted business con-
34 cerns;

35 (5) to the maximum extent practicable, increases or decreases in
36 profits of assisted business concerns; and

37 (6) the most recent analysis and determination made by the Admin-
38 istrator under section 273107(a)(2) of this title.

1 **§ 107112. Annual report of the Associate Administrator for**
2 **International Trade**

3 The Associate Administrator for International Trade shall annually sub-
4 mit to the Committee on Small Business and Entrepreneurship of the Sen-
5 ate and the Committee on Small Business of the House of Representatives
6 a report that contains—

7 (1) a description of the progress of the Office in implementing the
8 requirements of chapter 277;

9 (2) a detailed account of the results of export growth activities of
10 the Administrator, including the activities of each SBA district office
11 and SBA regional office, based on the performance measures described
12 in section 277108 of this title;

13 (3) an estimate of the total number of jobs created or retained as
14 a result of export assistance provided by the Administrator and re-
15 source partners of the Administrator;

16 (4) for any travel by the staff of the Office of International Trade,
17 the destination of the travel and the benefits to SBA and to small busi-
18 ness concerns resulting from the travel; and

19 (5) a description of the participation by the Office of International
20 Trade in trade negotiations.

21 **§ 107113. Biennial report on filling gaps in high-and-low-ex-**
22 **port volume areas**

23 Every 2 years, the Administrator shall—

24 (1) conduct a study of—

25 (A) the volume of exports for each State;

26 (B) the availability of export finance specialists in each State;

27 (C) the number of exporters in each State that are small busi-
28 ness concerns;

29 (D) the percentage of exporters in each State that are small
30 business concerns;

31 (E) the change, if any, in the number of exporters that are
32 small business concerns in each State—

33 (i) for the 1st study conducted under this paragraph, dur-
34 ing the 10-year period ending on September 27, 2010; and

35 (ii) for each subsequent study, during the 10-year period
36 ending on the date on which the study is commenced;

37 (F) the total value of the exports in each State by small busi-
38 ness concerns;

39 (G) the percentage of the total volume of exports in each State
40 that is attributable to small business concerns; and

1 (H) the change, if any, in the percentage of the total volume
2 of exports in each State that is attributable to small business con-
3 cerns—

4 (i) for the 1st study conducted under this paragraph, dur-
5 ing the 10-year period ending on September 27, 2010; and

6 (ii) for each subsequent study, during the 10-year period
7 ending on the date on which the study is commenced; and

8 (2) submit to the Committee on Small Business and Entrepreneur-
9 ship of the Senate and the Committee on Small Business of the House
10 of Representatives a report containing—

11 (A) the results of the study under paragraph (1);

12 (B) to the extent practicable, a recommendation regarding how
13 to eliminate gaps between the supply of and demand for export fi-
14 nance specialists in the 15 States that have the greatest volume
15 of exports, based on the most recent data available from the De-
16 partment of Commerce;

17 (C) to the extent practicable, a recommendation regarding how
18 to eliminate gaps between the supply of and demand for export fi-
19 nance specialists in the 15 States that have the lowest volume of
20 exports, based on the most recent data available from the Depart-
21 ment of Commerce; and

22 (D) such additional information as the Administrator deter-
23 mines is appropriate.

24 **§ 107114. Annual report on historical trends of the small**
25 **business sector**

26 The Administrator shall publish annually a report giving a comparative
27 analysis and interpretation of the historical trends of the small business sec-
28 tor as reflected by the data acquired under section 103203 of this title.

29 **§ 107115. Biennial report on accredited lenders program**

30 The Administrator shall biennially submit to the Committee on Small
31 Business and Entrepreneurship of the Senate and the Committee on Small
32 Business of the House of Representatives a report on the implementation
33 of section 331107 of this title that includes data on the number of qualified
34 development companies (as defined in section 331101 of this title) des-
35 ignated as accredited lenders, their debenture guarantee volume, their loss
36 rates, the average processing time on their guarantee applications, and such
37 other information as the Administrator considers appropriate.

38 **§ 107116. Annual report on premier certified lenders pro-**
39 **gram**

40 (a) IN GENERAL.—The Administrator shall annually submit to the Com-
41 mittee on Small Business and Entrepreneurship of the Senate and the Com-

1 mittee on Small Business of the House of Representatives a report on the
2 implementation of section 331108 of this title.

3 (b) CONTENTS.—A report under subsection (a) shall include—

4 (1) the number of certified development companies designated as
5 premier certified lenders;

6 (2) the debenture guarantee volume of those certified development
7 companies;

8 (3) a comparison of the loss rate of premier certified lenders with
9 the loss rate of accredited lenders under section 331107 of this title
10 and the loss rate of other certified development companies under chap-
11 ter 331, specifically comparing default rates and recovery rates on liq-
12 uidations; and

13 (4) such other information as the Administrator considers appro-
14 priate.

15 **§ 107117. Annual report on foreclosure and liquidation of**
16 **loans under the certified development company**
17 **program**

18 (a) IN GENERAL.—Based on information provided by qualified develop-
19 ment companies (as defined in section 331101 of this title) and SBA, the
20 Administrator shall annually submit to the Committee on Small Business
21 and Entrepreneurship of the Senate and the Committee on Small Business
22 of the House of Representatives a report on the results of delegation of au-
23 thority under section 331109 of this title.

24 (b) CONTENTS.—A report under subsection (a)—

25 (1) shall disclose, with respect to each loan foreclosed or liquidated
26 by a qualified development company under section 331109 of this title,
27 or for which losses were otherwise mitigated by the qualified develop-
28 ment company pursuant to a workout plan under that section—

29 (A) the total cost of the project financed with the loan;

30 (B) the total original dollar amount guaranteed by the Adminis-
31 trator;

32 (C) the total dollar amount of the loan at the time of liquida-
33 tion, foreclosure, or mitigation of loss;

34 (D) the total dollar losses resulting from the liquidation, fore-
35 closure, or mitigation of loss; and

36 (E) the total recoveries resulting from the liquidation, fore-
37 closure, or mitigation of loss, both as a percentage of the amount
38 guaranteed and the total cost of the project financed;

39 (2) shall disclose, with respect to each qualified development com-
40 pany to which authority is delegated under section 331109 of this title,

1 the totals of each of the amounts described in subparagraphs (A) to
2 (E) of paragraph (1);

3 (3) shall disclose, with respect to all loans subject to foreclosure, liq-
4 uidation, or mitigation under section 331109 of this title, the totals of
5 each of the amounts described in subparagraphs (A) to (E) of para-
6 graph (1);

7 (4) include a comparison between—

8 (A) the information provided under paragraph (3) with respect
9 to the 12-month period preceding the date on which the report is
10 submitted; and

11 (B) the same information with respect to loans foreclosed and
12 liquidated, or otherwise treated, by the Administrator during the
13 same period; and

14 (5)(A) shall disclose the number of times that the Administrator has
15 failed to—

16 (i) approve or reject a liquidation plan in accordance with sec-
17 tion 331109(c)(2)(A)(ii) of this title or a workout plan in accord-
18 ance with section 331109(c)(2)(C)(ii) of this title; or

19 (ii) approve or deny a request for purchase of indebtedness
20 under section 331109(c)(2)(B)(ii) of this title; and

21 (B) include specific information regarding—

22 (i) the reasons for the Administrator's failure; and

23 (ii) any delays that resulted.

24 **§ 107118. Reports on disaster assistance**

25 (a) DEFINITIONS.—In this section:

26 (1) MAJOR DISASTER UPDATE PERIOD.—The term “major disaster
27 update period”, with respect to a major disaster, means the period be-
28 ginning on the date on which the President declares the major disaster
29 (including any extraordinary disaster) and ending on the date on which
30 the declaration terminates.

31 (2) STATE.—The term “State” means a State of the United States,
32 the District of Columbia, Puerto Rico, the Northern Mariana Islands,
33 the Virgin Islands, Guam, American Samoa, and any territory or pos-
34 session of the United States.

35 (b) MONTHLY ACCOUNTING REPORTS FOR MAJOR DISASTERS.—

36 (1) REPORTING REQUIREMENTS.—Not later than the 5th business
37 day of each month during the applicable period for a major disaster,
38 the Administrator shall submit to the Committee on Small Business
39 and Entrepreneurship and Committee on Appropriations of the Senate
40 and the Committee on Small Business and Committee on Appropria-
41 tions of the House of Representatives a report on the operation of the

1 disaster assistance programs for that major disaster during the preced-
2 ing month.

3 (2) CONTENTS.—A report under paragraph (1) shall include—

4 (A)(i) the daily average lending volume, in number of loans and
5 dollars, of each category of loan; and

6 (ii) the percentage by which each category has increased or de-
7 creased since the previous report;

8 (B)(i) the weekly average lending volume, in number of loans
9 and dollars, of each category of loan; and

10 (ii) the percentage by which each category has increased or de-
11 creased since the previous report;

12 (C)(i) the amount of funding spent over the month for each cat-
13 egory of loan, both in amount of appropriations and in program
14 level; and

15 (ii) the percentage by which each category has increased or de-
16 creased since the previous report;

17 (D)(i) the amount of funding available for loans, in amount of
18 appropriations and in program level, for each category of loan; and

19 (ii) the percentage by which each category has increased or de-
20 creased since the previous report, noting the source of any addi-
21 tional funding;

22 (E) an estimate of how long the available funding for loans will
23 last, based on the spending rate;

24 (F)(i) the amount of funding spent over the month for staff en-
25 gaged in the operation of the disaster assistance programs;

26 (ii) the number of staff engaged in the operation of the disaster
27 assistance programs; and

28 (iii) the percentage by which the funding and number of staff
29 engaged in the operation of the disaster assistance programs have
30 increased or decreased since the previous report;

31 (G)(i) the amount of funding spent over the month for adminis-
32 trative costs of the disaster assistance programs; and

33 (ii) the percentage by which spending for those administrative
34 costs has increased or decreased since the previous report;

35 (H)(i) the amount of funding available for salaries and expenses
36 combined for operation of the disaster assistance programs; and

37 (ii) the percentage by which that funding has increased or de-
38 creased since the previous report, noting the source of any addi-
39 tional funding; and

40 (I) an estimate of how long the available funding for those sala-
41 ries and expenses will last, based on the spending rate.

1 (c) WEEKLY DISASTER UPDATES FOR MAJOR DISASTERS.—

2 (1) IN GENERAL.—Each week during a major disaster update period,
3 the Administrator shall submit to the Committee on Small Business
4 and Entrepreneurship of the Senate and the Committee on Small Busi-
5 ness of the House of Representatives a report on the operation of the
6 disaster assistance programs for the major disaster area.

7 (2) CONTENTS.—A report under paragraph (1) shall include—

8 (A)(i) the number of SBA staff performing loan processing,
9 field inspection, and other duties for the major disaster; and

10 (ii) the allocations of the staff in the disaster field offices, disas-
11 ter recovery centers, workshops, and other SBA offices nationwide;

12 (B)(i) the daily number of applications received from applicants
13 in the major disaster area; and

14 (ii) a breakdown of that number by State;

15 (C)(i) the daily number of applications pending application
16 entry from applicants in the major disaster area; and

17 (ii) a breakdown of that number by State;

18 (D)(i) the daily number of applications withdrawn by applicants
19 in the major disaster area; and

20 (ii) a breakdown of that number by State;

21 (E)(i) the daily number of applications summarily declined by
22 the Administrator from applicants in the major disaster area; and

23 (ii) a breakdown of that number by State;

24 (F)(i) the daily number of applications declined by the Adminis-
25 trator from applicants in the major disaster area; and

26 (ii) a breakdown of that number by State;

27 (G)(i) the daily number of applications in process from appli-
28 cants in the major disaster area; and

29 (ii) a breakdown of that number by State;

30 (H)(i) the daily number of applications approved by the Admin-
31 istrator from applicants in the major disaster area; and

32 (ii) a breakdown of that number by State;

33 (I)(i) the daily dollar amount of applications approved by the
34 Administrator from applicants in the major disaster area; and

35 (ii) a breakdown of that number by State;

36 (J)(i) the daily number of loans disbursed, both partially and
37 fully, by the Administrator to applicants in the major disaster
38 area; and

39 (ii) a breakdown of that number by State;

40 (K)(i) the daily dollar amount of loans disbursed, both partially
41 and fully, to applicants in the major disaster area; and

- 1 (ii) a breakdown of that number by State;
- 2 (L) the number of applications approved, including dollar
- 3 amount approved, and applications partially and fully disbursed,
- 4 including dollar amounts, since the last report under paragraph
- 5 (1); and
- 6 (M)(i) the declaration date, physical damage closing date, and
- 7 economic injury closing date for the major disaster; and
- 8 (ii) the number of counties in the major disaster area.

9 (d) PERIODS WHEN ADDITIONAL DISASTER ASSISTANCE IS MADE

10 AVAILABLE.—

11 (1) IN GENERAL.—During any period for which the Administrator

12 declares eligibility for additional disaster assistance under section

13 221108 of this title, the Administrator shall, on a monthly basis, sub-

14 mit to the Committee on Small Business and Entrepreneurship of the

15 Senate and the Committee on Small Business of the House of Rep-

16 resentatives a report on the disaster assistance operations of the Ad-

17 ministrator with respect to the applicable major disaster.

18 (2) CONTENTS.—A report under paragraph (1) shall specify—

- 19 (A) the number of applications for disaster assistance distrib-
- 20 uted;
- 21 (B) the number of applications for disaster assistance received;
- 22 (C) the average time for the Administrator to approve or dis-
- 23 approve an application for disaster assistance;
- 24 (D) the number of disaster loans approved;
- 25 (E) the average time for initial disbursement of disaster loan
- 26 proceeds; and
- 27 (F) the dollar amount of disaster loan proceeds disbursed.

28 (e) NOTICE OF NEED FOR SUPPLEMENTAL FUNDS.—On the date on

29 which the Administrator notifies any committee of the Senate or the House

30 of Representatives that supplemental funding is necessary for the disaster

31 assistance programs in any fiscal year, the Administrator shall notify in

32 writing the Committee on Small Business and Entrepreneurship of the Sen-

33 ate and the Committee on Small Business of the House of Representatives

34 regarding the need for supplemental funds for the disaster assistance pro-

35 grams.

36 (f) REPORT ON CONTRACTING.—

37 (1) IN GENERAL.—Not later than 6 months after the date on which

38 the President declares a major disaster, and every 6 months thereafter

39 until the date that is 18 months after the date on which the major dis-

40 aster is declared, the Administrator shall submit to the Committee on

41 Small Business and Entrepreneurship of the Senate and the Committee

1 on Small Business of the House of Representatives a report regarding
2 Federal contracts awarded as a result of the major disaster.

3 (2) CONTENTS.—A report under paragraph (1) shall include—

4 (A) the number of contracts awarded as a result of the major
5 disaster;

6 (B) the number of contracts awarded to small business concerns
7 as a result of the major disaster;

8 (C) the number of contracts awarded to women-owned business
9 concerns and minority-owned business concerns as a result of the
10 major disaster; and

11 (D) the number of contracts awarded to business concerns local
12 to the major disaster area as a result of the major disaster.

13 (g) ANNUAL REPORTS ON DISASTER ASSISTANCE.—

14 (1) IN GENERAL.—Not later than 45 days after the end of a fiscal
15 year, the Administrator shall submit to the Committee on Small Busi-
16 ness and Entrepreneurship of the Senate and the Committee on Small
17 Business of the House of Representatives a report on the disaster as-
18 sistance operations of SBA for the fiscal year.

19 (2) CONTENTS.—A report under paragraph (1) shall—

20 (A) specify the number of SBA personnel involved in disaster
21 assistance operations;

22 (B) describe any material changes to disaster assistance oper-
23 ations, such as changes to technologies used or to personnel re-
24 sponsibilities;

25 (C) describe and assess the effectiveness of the Administrator
26 in responding to disasters during the fiscal year, including a de-
27 scription of the number and dollar amounts of loans made for
28 damage and for economic injury; and

29 (D) describe the plans of the Administrator for preparing to re-
30 spond to disasters during the next fiscal year.

31 **§ 107119. Annual report on subcontracting goals**

32 Not later than March 31 of each year, the Administrator shall submit to
33 the Committee on Small Business of the House of Representatives and the
34 Committee on Small Business and Entrepreneurship of the Senate a report,
35 based on data available through systems in existence on January 2, 2013,
36 that discloses, for each Federal agency (and to the extent practicable, by
37 type of goal or plan)—

38 (1)(A) the percentage of offerors and bidders that were required to
39 submit reports under section 243103(d)(5) of this title during the pre-
40 ceding fiscal year that filed the required reports; and

1 (B) the percentage of those offerors and bidders that failed to file
2 the required reports;

3 (2) the percentage of offerors and bidders that filed the required re-
4 ports that met, exceeded, or failed to meet goals set forth in their sub-
5 contracting plans during the preceding fiscal year; and

6 (3) the aggregate value by which offerors and bidders that filed the
7 required reports exceeded, or failed to meet, their subcontracting goals
8 during the preceding fiscal year.

9 **§ 107120. Annual report on suspensions and debarments**

10 (a) IN GENERAL.—The Administrator shall annually submit to the Com-
11 mittee on Small Business and Entrepreneurship of the Senate and the Com-
12 mittee on Small Business of the House of Representatives a report on the
13 suspension and debarment actions taken by the Administrator during the
14 year preceding the year of submission of the report.

15 (b) CONTENTS.—A report under subsection (a) shall include the following
16 information for the year covered by the report:

17 (1) NUMBER PROPOSED.—The number of contractors proposed for
18 suspension or debarment.

19 (2) SOURCE OF PROPOSAL.—The office within a Federal agency that
20 originated each proposal for suspension or debarment.

21 (3) REASONS FOR PROPOSALS.—The reason for each proposal for
22 suspension or debarment.

23 (4) RESULTS.—The result of each proposal for suspension or debar-
24 ment, and the reason for the result.

25 (5) REFERRALS.—The number of suspensions or debarments re-
26 ferred to the Inspector General of SBA or of another Federal agency
27 or to the Attorney General.

28 (c) REDACTION OF IDENTIFYING INFORMATION.—For purposes of sub-
29 section (b)(5), the Administrator may redact identifying information on
30 names of companies or other information to protect the integrity of any on-
31 going criminal or civil investigation.

32 **§ 107121. Annual report on training and travel by Directors**
33 **of Small and Disadvantaged Business Utilization**

34 At the end of each fiscal year, the Director of Small and Disadvantaged
35 Business Utilization of a Federal agency shall submit to the Committee on
36 Small Business of the House of Representatives and the Committee on
37 Small Business and Entrepreneurship of the Senate a report that—

38 (1) describes the training provided by the Director under section
39 251109(e)(5) of this title during the fiscal year;

40 (2) discloses the percentage of the budget of the Director used for
41 that training; and

1 (3) discloses the percentage of the budget of the Director used for
2 travel during the fiscal year.

3 **§ 107122. Triennial report regarding procurement center**
4 **representatives and commercial market represent-**
5 **atives**

6 (a) IN GENERAL.—Every 3 years, the Administrator shall submit to the
7 Committee on Small Business and Entrepreneurship of the Senate and the
8 Committee on Small Business of the House of Representatives a report re-
9 garding procurement center representatives and commercial market rep-
10 resentatives.

11 (b) CONTENTS.—A report under subsection (a) shall—

12 (1) identify each area for which the Administrator has assigned a
13 procurement center representative or a commercial market representa-
14 tive;

15 (2) explain why the Administrator selected the areas identified under
16 paragraph (1); and

17 (3) describe the activities performed by procurement center rep-
18 resentatives and commercial market representatives.

19 **§ 107123. Quinquennial report on representation of women**

20 (a) STUDY.—The Administrator shall periodically conduct a study to
21 identify industries (as defined under the North American Industry Classi-
22 fication System) that are underrepresented by small business concerns
23 owned and controlled by women.

24 (b) REPORT.—Not later than January 2, 2018, and every 5 years there-
25 after, the Administrator shall submit to the Committee on Small Business
26 and Entrepreneurship of the Senate and the Committee on Small Business
27 of the House of Representatives a report on the results of each study under
28 subsection (a) conducted during the 5-year period ending on the date of the
29 report.

30 **§ 107124. Annual report on mentor-protégé programs**

31 (a) IN GENERAL.—Not later than January 2, 2015, and annually there-
32 after, the Administrator shall submit to the Committee on Small Business
33 of the House of Representatives and the Committee on Small Business and
34 Entrepreneurship of the Senate a report that—

35 (1) identifies each Federal mentor-protégé program under section
36 299106 of this title;

37 (2) discloses the number of participants in each mentor-protégé pro-
38 gram, including the number of participants that are—

39 (A) small business concerns;

40 (B) qualified HUBZone small business concerns;

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- 1 (C) small business concerns owned and controlled by service-dis-
 2 abled veterans;
- 3 (D) small business concerns owned and controlled by socially
 4 and economically disadvantaged individuals; or
- 5 (E) small business concerns owned and controlled by women;
- 6 (3) describes the type of assistance provided to protégés under each
 7 mentor-protégé program;
- 8 (4) describes the benefits provided to mentors under each mentor-
 9 protégé program; and
- 10 (5) describes the progress of protégés under each mentor-protégé
 11 program with respect to competing for Federal prime contracts and
 12 subcontracts.
- 13 (b) PROVISION OF INFORMATION.—The head of a Federal agency that
 14 carries out a mentor-protégé program under section 299106 of this title
 15 shall annually provide the Administrator the information necessary for the
 16 Administrator to submit a report under subsection (a).

17 **Chapter 109—Funding**

Sec.

109101. Commitments in full amounts provided by law.
 109102. Program levels.
 109103. Authorization of appropriations.
 109104. TARP funds and tax increases.
 109105. Annual budget request.

18 **§ 109101. Commitments in full amounts provided by law**

19 (a) IN GENERAL.—Notwithstanding any other provision of law, the Ad-
 20 ministrator shall enter into commitments for direct loans and to guarantee
 21 loans, debentures, payment of rentals, or other amounts due under qualified
 22 contracts and other types of financial assistance, and enter into commit-
 23 ments to purchase debentures and preferred securities and to guarantee
 24 sureties against loss pursuant to programs under subtitles II and III, in the
 25 full amounts provided by law subject only to—

- 26 (1) the availability of qualified applications; and
 27 (2) limitations contained in appropriations Acts.

28 (b) EFFECT OF SECTION.—Nothing in this section authorizes the Admin-
 29 istrator to reduce or limit the authority of the Administrator to enter into
 30 a commitment described in subsection (a).

31 (c) MULTIPLE FISCAL YEARS.—Subject to approval in appropriations
 32 Acts, amounts authorized for preferred securities, debentures, or participat-
 33 ing securities under chapter 303 may be obligated in 1 fiscal year and dis-
 34 bursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

35 **§ 109102. Program levels**

36 (a) FISCAL YEAR 2005.—The following program levels are authorized for
 37 fiscal year 2005:

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1 (1) For the programs authorized by this subtitle and subtitle II, the
2 Administrator may make—

3 (A) \$75,000,000 in technical assistance grants, as provided in
4 chapter 213; and

5 (B) \$105,000,000 in direct loans, as provided in chapter 213.

6 (2) For the programs authorized by this subtitle and subtitle II, the
7 Administrator may make \$23,050,000,000 in deferred participation
8 loans and other financings. Of that sum, the Administrator may
9 make—

10 (A) \$16,500,000,000 in general business loans, as provided in
11 division B of subtitle II;

12 (B) \$6,000,000,000 in certified development company financ-
13 ings, as provided in section 205107 of this title and chapter 331;

14 (C) \$500,000,000 in loans, as provided in section 205112 of
15 this title; and

16 (D) \$50,000,000 in loans, as provided in chapter 213.

17 (3) For the programs authorized by chapter 303, the Administrator
18 may make—

19 (A) \$4,250,000,000 in purchases of participating securities; and

20 (B) \$3,250,000,000 in guarantees of debentures.

21 (4) For the programs authorized by chapter 321, the Administrator
22 may enter into guarantees not to exceed \$6,000,000,000, of which not
23 more than 50 percent may be in bonds approved under section
24 321102(a)(4) of this title.

25 (5) The Administrator may make grants or enter into cooperative
26 agreements for a total amount of \$7,000,000 for SCORE.

27 (b) FISCAL YEAR 2006.—The following program levels are authorized for
28 fiscal year 2006:

29 (1) For the programs authorized by this subtitle and subtitle II, the
30 Administrator may make—

31 (A) \$80,000,000 in technical assistance grants, as provided in
32 chapter 213; and

33 (B) \$110,000,000 in direct loans, as provided in chapter 213.

34 (2) For the programs authorized by this subtitle and subtitle II, the
35 Administrator may make \$25,050,000,000 in deferred participation
36 loans and other financings. Of that sum, the Administrator may
37 make—

38 (A) \$17,000,000,000 in general business loans, as provided in
39 division B of subtitle II;

40 (B) \$7,500,000,000 in certified development company financ-
41 ings, as provided in section 205107 of this title and chapter 331;

1 (C) \$500,000,000 in loans, as provided in section 205112 of
2 this title; and

3 (D) \$50,000,000 in loans, as provided in chapter 213.

4 (3) For the programs authorized by chapter 303, the Administrator
5 may make—

6 (A) \$4,500,000,000 in purchases of participating securities; and

7 (B) \$3,500,000,000 in guarantees of debentures.

8 (4) For the programs authorized by chapter 321, the Administrator
9 may enter into guarantees not to exceed \$6,000,000,000, of which not
10 more than 50 percent may be in bonds approved under section
11 321102(a)(4) of this title.

12 (5) The Administrator may make grants or enter into cooperative
13 agreements for a total amount of \$7,000,000 for SCORE.

14 (e) AMOUNT OF DEFERRED PARTICIPATION LOANS.—Except as may be
15 otherwise specifically provided by law, the amount of deferred participation
16 loans authorized in this section—

17 (1) means the net amount of the loan principal guaranteed by the
18 Administrator and does not include any amount that is not guaranteed;
19 and

20 (2) shall be available for a national program, except that the Admin-
21 istrator may use not more than an amount equal to 10 percent of the
22 amount authorized each year for any special or pilot program directed
23 to identified sectors of the small business community or to specific geo-
24 graphic regions of the United States.

25 **§ 109103. Authorization of appropriations**

26 (a) CERTAIN ADMINISTRATIVE EXPENSES.—For each fiscal year, there
27 are authorized to be appropriated such sums as are necessary, to remain
28 available until expended—

29 (1) to carry out the small business development center program, but
30 not to exceed the annual funding level specified in section 271102 of
31 this title;

32 (2) to pay the expenses of the National Small Business Development
33 Center Advisory Board under section 271109 of this title;

34 (3) to pay the expenses of the information sharing system under sec-
35 tion 271104(j) of this title;

36 (4) to pay the expenses of the Association for conducting the accredi-
37 tation program under section 271111 of this title;

38 (5) to pay SBA's expenses, including salaries of examiners, for con-
39 ducting examinations as part of the accreditation program conducted
40 by the Association; and

1 (6) to pay for small business development center grants as directed
2 by Congress.

3 (b) PROGRAMS FOR WHICH PROGRAM LEVELS ARE ESTABLISHED
4 UNDER SECTION 109102.—

5 (1) IN GENERAL.—There are authorized to be appropriated to SBA
6 for each of fiscal years 2005 and 2006 such sums as are necessary to
7 carry out—

8 (A) the provisions of this subtitle and subtitle II not elsewhere
9 provided for (including salaries and expenses of SBA and nec-
10 essary loan capital for loans under the disaster loan program); and

11 (B) subtitle III.

12 (2) LIMITATIONS.—Notwithstanding any other provision of this sub-
13 section, for each of fiscal years 2005 and 2006, respectively—

14 (A) no funds are authorized to be used as loan capital for the
15 loan program authorized by section 205112 of this title except by
16 transfer from another Federal agency to SBA, unless the program
17 level authorized for general business loans under subsection
18 (a)(2)(A) or (b)(2)(A) of section 109102 of this title is fully fund-
19 ed; and

20 (B) the Administrator may not approve loans on behalf of SBA
21 or on behalf of any other Federal agency, by contract or otherwise,
22 under terms or conditions other than those specifically authorized
23 under this subtitle or subtitle II or III, except that the Adminis-
24 trator may approve loans under section 205112 of this title in
25 gross amounts of not more than \$2,000,000.

26 (c) OFFICE OF ADVOCACY.—

27 (1) APPROPRIATION REQUESTS.—Each budget of the United States
28 Government submitted by the President under section 1105 of title 31
29 shall include a separate statement of the amount of appropriations re-
30 quested for the Office of Advocacy of SBA, which shall be designated
31 in a separate account in the general fund of the Treasury.

32 (2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to
33 be appropriated such sums as are necessary to carry out section
34 103107 of this title. Any amount appropriated under this paragraph
35 shall remain available, without fiscal year limitation, until expended.

36 (d) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There are author-
37 ized to be appropriated to carry out section 103113 of this title—

38 (1) \$1,500,000 for fiscal year 2005; and

39 (2) \$2,000,000 for fiscal year 2006.

40 (e) LOSSES AND INTEREST SUBSIDIES.—There are authorized to be ap-
41 propriated for each fiscal year such sums as are necessary for losses and

1 interest subsidies incurred by the accounts referred to in section
2 103202(a)(1) of this title.

3 (f) HUBZONE PROGRAM.—There is authorized to be appropriated to
4 carry out chapter 253 \$10,000,000 for each of fiscal years 2004 through
5 2006.

6 (g) FAST PROGRAM.—

7 (1) IN GENERAL.—There is authorized to be appropriated to carry
8 out the FAST program (including mentoring networks) \$10,000,000
9 for each of fiscal years 2001 through 2005.

10 (2) MENTORING DATABASE.—Of the total amount made available
11 under paragraph (1) for fiscal years 2001 through 2005, a reasonable
12 amount, not to exceed a total of \$500,000, may be used by the Admin-
13 istrator to carry out section 263305(f)(3) of this title.

14 (h) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—

15 (1) IN GENERAL.—There are authorized to be appropriated to carry
16 out chapter 271—

17 (A) \$130,000,000 for fiscal year 2005; and

18 (B) \$135,000,000 for fiscal year 2006.

19 (2) GRANTS.—There is authorized to be appropriated \$50,000,000
20 to carry out section 271115 of this title.

21 (i) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—There is au-
22 thorized to be appropriated to carry out section 299102 of this title
23 \$6,600,000 for each of fiscal years 2001 through 2006, to remain available
24 until expended.

25 (j) PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.—

26 (1) IN GENERAL.—There is authorized to be appropriated to carry
27 out section 299104 of this title (other than section 299104(b)(2) of
28 this title) \$5,000,000 for each of fiscal years 2005 and 2006. Amounts
29 made available under this paragraph shall remain available until ex-
30 pended.

31 (2) SMALL BUSINESS DEVELOPMENT CENTERS.—Of the total
32 amount made available under paragraph (1) for each of fiscal years
33 2005 and 2006, not more than the greater of 10 percent or \$500,000
34 may be used to carry out section 271104(b)(21) of this title.

35 (3) ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE
36 GRANTS.—There are authorized to be appropriated to carry out section
37 299104(b)(2) of this title \$1,500,000 for each of fiscal years 2005 and
38 2006. Amounts made available under this paragraph shall remain avail-
39 able until expended.

40 (4) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 5 per-
41 cent of the total amount made available under this subsection for any

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1 fiscal year shall be used for administrative costs (determined without
2 regard to the administrative costs of eligible intermediaries).

3 (k) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—

4 (1) IN GENERAL.—There are authorized to be appropriated for fiscal
5 years 2001 through 2006, to remain available until expended, the fol-
6 lowing sums:

7 (A) Such subsidy budget authority as is necessary to guarantee
8 \$150,000,000 of debentures under chapter 305.

9 (B) \$30,000,000 to make grants under chapter 305.

10 (2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited
11 under section 305112(d) of this title are authorized to be appropriated
12 only for the costs of examinations under section 305112 of this title
13 and for the costs of other oversight activities with respect to the new
14 markets venture capital company program.

15 (l) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY PROGRAM.—

16 (1) IN GENERAL.—Subject to the availability of appropriations, the
17 Administrator may make \$15,000,000 in operational assistance grants
18 under section 307107 of this title for each of fiscal years 2008 and
19 2009.

20 (2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited
21 under section 307111(d) of this title are authorized to be appropriated
22 only for the costs of examinations under section 307111 of this title
23 and for the costs of other oversight activities with respect to the renew-
24 able fuel capital investment company program.

25 **§ 109104. TARP funds and tax increases**

26 (a) DEFINITION OF COVERED AMOUNT.—In this section, the term “cov-
27 ered amount” means—

28 (1) an amount made available to the Secretary of the Treasury
29 under title I of the Emergency Economic Stabilization Act of 2008 (12
30 U.S.C. 5211 et seq.) to purchase (under section 101 of that Act (12
31 U.S.C. 5211)) or guarantee (under section 102 of that Act (12 U.S.C.
32 5212)) assets under that Act; and

33 (2) a revenue increase attributable to any amendment to the Internal
34 Revenue Code of 1986 made during the period beginning on September
35 27, 2010, and ending on December 31, 2010.

36 (b) PROHIBITION.—No covered amount shall be used to carry out the
37 provisions described in subsection (c) (as restated in this title, in the case
38 of the provisions described in paragraphs (1) to (3), (5) to (7), and (9) to
39 (13)).

40 (c) PROVISIONS.—The provisions referred to in subsection (b) are—

- 1 (1) the amendments made by section 1111 of the Small Business
- 2 Job Creation and Access to Capital Act of 2010 (124 Stat. 2507);
- 3 (2) the amendments made by section 1112 of the Small Business
- 4 Job Creation and Access to Capital Act of 2010 (124 Stat. 2508);
- 5 (3) the amendments made by section 1113 of the Small Business
- 6 Job Creation and Access to Capital Act of 2010 (124 Stat. 2508);
- 7 (4) the amendments made by section 1114 of the Small Business
- 8 Job Creation and Access to Capital Act of 2010 (124 Stat. 2508);
- 9 (5) the amendment made by section 1115 of the Small Business Job
- 10 Creation and Access to Capital Act of 2010 (124 Stat. 2508);
- 11 (6) the amendment made by section 1116 of the Small Business Job
- 12 Creation and Access to Capital Act of 2010 (124 Stat. 2509);
- 13 (7) the amendment made by section 1117 of the Small Business Job
- 14 Creation and Access to Capital Act of 2010 (124 Stat. 2509);
- 15 (8) section 1118 of the Small Business Job Creation and Access to
- 16 Capital Act of 2010 (124 Stat. 2509);
- 17 (9) the amendment made by section 1122(a) of the Small Business
- 18 Job Creation and Access to Capital Act of 2010 (124 Stat. 2510);
- 19 (10) section 1122(b) of the Small Business Job Creation and Access
- 20 to Capital Act of 2010 (124 Stat. 2512);
- 21 (11) the amendment made by section 1122(c) of the Small Business
- 22 Job Creation and Access to Capital Act of 2010 (124 Stat. 2512);
- 23 (12) the amendment made by section 1131(a) of the Small Business
- 24 Job Creation and Access to Capital Act of 2010 (124 Stat. 2512); and
- 25 (13) subsections (b) and (c) of section 1131 of the Small Business
- 26 Job Creation and Access to Capital Act of 2010 (124 Stat. 2514).

27 **§ 109105. Annual budget request**

28 (a) IN GENERAL.—For each fiscal year, the budget request for SBA shall
29 provide a detailed justification of any proposed changes from the enacted
30 level by individual appropriation.

31 (b) CONTENTS.—The detailed justification shall include at a minimum a
32 description of each credit program and noncredit program, including the
33 amount of funding and the amount of costs by appropriation account and
34 fiscal year.

35 (c) MULTIPLE APPROPRIATIONS.—For activities funded in multiple ap-
36 propriations, the budget justification shall—

- 37 (1) specify the amount included in each enacted appropriation;
- 38 (2) specify the amount proposed for the budget year; and
- 39 (3) provide a justification for any proposed changes.

1 **Subtitle II—Loan, Contracting, and**
2 **Related Assistance Programs**
3 **Division A—General Provisions**
4 **Chapter 201—General Provisions**

Sec.

201101. Certification of compliance with child support obligations.
201102. Authorities in carrying out programs for small business concerns in areas with high proportions of unemployed or low-income individuals and small business concerns owned by low-income individuals.
201103. Extension or renewal of loans.
201104. Deferral of repayment for active duty reservists.
201105. Ownership interest arising from community property law.
201106. Use of financial assistance programs.

5 **§ 201101. Certification of compliance with child support ob-**
6 **ligations**

7 (a) IN GENERAL.—A recipient of financial assistance under this subtitle
8 shall certify that the recipient is not more than 60 days delinquent under
9 the terms of any—

10 (1) administrative order;

11 (2) court order; or

12 (3) repayment agreement entered into between the recipient and the
13 custodial parent or State agency providing child support enforcement
14 services;

15 that requires the recipient to pay child support (as defined in section 459(i)
16 of the Social Security Act (42 U.S.C. 659(i))).

17 (b) ENFORCEMENT.—The Administrator shall promulgate such regula-
18 tions as are necessary to enforce compliance with this section.

19 **§ 201102. Authorities in carrying out programs for small**
20 **business concerns in areas with high proportions**
21 **of unemployed or low-income individuals and**
22 **small business concerns owned by low-income in-**
23 **dividuals**

24 In carrying out section 205104 of this title and the business development
25 program, the Administrator may—

26 (1) use, with their consent, the services and facilities of Federal
27 agencies without reimbursement, and, with the consent of any State or
28 political subdivision of a State, accept and use the services and facili-
29 ties of the State or subdivision without reimbursement;

30 (2) accept, in the name of SBA, and employ or dispose of in further-
31 ance of the purposes of this subtitle, any money or property, real, per-
32 sonal, or mixed, tangible, or intangible, received by gift, devise, be-
33 quest, or otherwise;

34 (3) accept voluntary and uncompensated services, notwithstanding
35 section 1342 of title 31; and

1 (4)(A) employ experts and consultants or organizations of experts
2 and consultants as authorized by section 3109 of title 5, except that
3 no individual may be employed under this subsection for more than 100
4 days in any fiscal year;

5 (B) compensate individuals employed under subparagraph (A) at
6 rates not in excess of the daily equivalent of the highest rate payable
7 under section 5332 of title 5, including travel time;

8 (C) allow individuals employed under subparagraph (A), while away
9 from their homes or regular places of business, travel expenses (includ-
10 ing per diem in lieu of subsistence) as authorized by section 5703 of
11 title 5 for persons in the Government service employed intermittently,
12 while so employed; and

13 (D) notwithstanding section 3109(b) of title 5, renew contracts for
14 employment under subparagraph (A) annually.

15 **§ 201103. Extension or renewal of loans**

16 (a) IN GENERAL.—The Administrator may extend the maturity of or
17 renew a loan under the general business loan program, disaster loan pro-
18 gram, private disaster loan program, intermediary lending pilot program, or
19 microloan program for additional periods not to exceed 10 years beyond the
20 period stated in the loan if the extension or renewal will aid in the orderly
21 liquidation of the loan.

22 (b) INAPPLICABILITY TO CERTAIN DISASTER LOANS.—Subsection (a)
23 does not apply to a loan under the disaster loan program that has a term
24 of more than 20 years.

25 **§ 201104. Deferral of repayment for active duty reservists**

26 (a) DEFINITIONS.—In this section:

27 (1) ELIGIBLE RESERVIST.—The term “eligible reservist” means a
28 member of a reserve component of the Armed Forces ordered to active
29 duty during a period of military conflict.

30 (2) ESSENTIAL EMPLOYEE.—The term “essential employee” means
31 an individual who is employed by a small business concern and whose
32 managerial or technical expertise is critical to the successful day-to-day
33 operations of the small business concern.

34 (3) PERIOD OF MILITARY CONFLICT.—The term “period of military
35 conflict” means—

36 (A) a period of war declared by Congress;

37 (B) a period of national emergency declared by Congress or by
38 the President; or

39 (C) a period of a contingency operation (as defined in section
40 101(a) of title 10).

1 (4) QUALIFIED BORROWER.—The term “qualified borrower”
2 means—

3 (A) an individual who is an eligible reservist and who received
4 a direct loan under the general business loan program or a disas-
5 ter assistance program before being ordered to active duty; or

6 (B) a small business concern that received a direct loan under
7 the general business loan program or a disaster assistance pro-
8 gram before an eligible reservist, who is an essential employee, was
9 ordered to active duty.

10 (b) DEFERRAL OF DIRECT LOANS.—

11 (1) IN GENERAL.—The Administrator shall, on written request, defer
12 repayment of principal and interest due on a direct loan made under
13 the general business loan program or a disaster assistance program if
14 the loan was incurred by a qualified borrower.

15 (2) PERIOD OF DEFERRAL.—The period of deferral for repayment
16 under paragraph (1) shall begin on the date on which the eligible re-
17 servist is ordered to active duty and terminate on the date that is 180
18 days after the date on which the eligible reservist is discharged or re-
19 leased from active duty.

20 (3) INTEREST RATE REDUCTION DURING DEFERRAL.—Notwithstand-
21 ing any other provision of law, during the period of deferral under
22 paragraph (2), the Administrator may reduce the interest rate on a
23 loan qualifying for a deferral under this subsection.

24 (c) DEFERRAL OF LOAN GUARANTEES AND OTHER FINANCINGS.—The
25 Administrator shall—

26 (1) encourage intermediaries participating in the microloan program
27 to defer repayment of a microloan made with proceeds made available
28 under the microloan program, if the microloan was incurred by a small
29 business concern that is eligible to apply for assistance under section
30 221103 of this title; and

31 (2) establish guidelines to—

32 (A) encourage lenders and other intermediaries to defer repay-
33 ment of, or provide other relief relating to—

34 (i) loan guarantees under the general business loan pro-
35 gram and financings under the certified development company
36 program that were incurred by small business concerns that
37 are eligible to apply for assistance under section 221103 of
38 this title; and

39 (ii) loan guarantees provided under the microloan program
40 if the intermediary provides relief to a small business concern
41 under this subsection; and

1 (B) implement a program to provide for the deferral of repay-
2 ment or other relief to any intermediary providing relief to a small
3 business borrower under this subsection.

4 **§ 201105. Ownership interest arising from community prop-**
5 **erty law**

6 Ownership requirements to determine the eligibility of a small business
7 concern that applies for assistance under any credit program under this
8 subtitle shall be determined without regard to any ownership interest of a
9 spouse arising solely from the application of the community property law
10 of a State for purposes of determining marital interests.

11 **§ 201106. Use of financial assistance programs**

12 The financial assistance programs authorized by this subtitle and subtitle
13 I shall be used to assist small business concerns that are engaged in—

- 14 (1) the production of food or fiber;
15 (2) ranching;
16 (3) livestock raising;
17 (4) aquaculture; or
18 (5) any other industry relating to agriculture.

19 **Division B—General Business Loan**
20 **Program**

21 **Chapter 203—General Purpose Loans**

Sec.

203101. Loan authority.
203102. Methods of participation.
203103. No credit elsewhere.
203104. Sound and secure requirement.
203105. Level of participation in guaranteed loans.
203106. Maximum loan amounts.
203107. Interest rates.
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203115. Notification to Congress of significant policy or administrative changes.
203116. Pilot programs.
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203118. Leasing.
203119. Real estate appraisals.
203120. Express loan program.
203121. Loan application preparation and loan servicing by qualified development companies.
203122. Increased veteran/reservist participation program.

22 **§ 203101. Loan authority**

23 To the extent and in such amounts as are provided in advance in appro-
24 priation Acts, the Administrator may make loans to small business concerns
25 (including a small business concern owned by a qualified Indian tribe) for

1 plant acquisition, construction, conversion, or expansion, including the ac-
2 quisition of land, material, supplies, equipment, and working capital.

3 **§ 203102. Methods of participation**

4 The Administrator may make a loan under section 203101 of this title—

- 5 (1) directly; or
6 (2) in cooperation with a bank or other lending institution or any
7 other entity through an agreement to participate on an immediate or
8 deferred (guaranteed) basis.

9 **§ 203103. No credit elsewhere**

10 (a) IN GENERAL.—No financial assistance shall be extended under the
11 general business loan program if the applicant can obtain credit elsewhere.

12 (b) IMMEDIATE PARTICIPATION.—No immediate participation may be
13 purchased unless it is shown that a deferred participation is not available.

14 (c) DIRECT FINANCING.—No direct financing may be made unless it is
15 shown that a participation is not available.

16 **§ 203104. Sound and secure requirement**

17 (a) IN GENERAL.—A loan made under the general business loan program
18 shall be of such sound value or so secured as reasonably to ensure repay-
19 ment.

20 (b) REASONABLE DOUBT.—In applying subsection (a) in the case of a
21 loan to assist a public or private organization for the disabled or to assist
22 a disabled individual as provided in section 205103 of this title, any reason-
23 able doubt shall be resolved in favor of the applicant.

24 (c) ENERGY MEASURES.—Recognizing that greater risk may be associ-
25 ated with a loan for an energy measure as provided in section 205105 of
26 this title, in applying subsection (a) in the case of such a loan—

- 27 (1) factors in determining sound value shall include—
28 (A) quality of the product or service;
29 (B) technical qualifications of the applicant or employees of the
30 applicant;
31 (C) sales projections; and
32 (D) the financial status of the applicant; and
33 (2) the loan need not be as sound as is generally required for a loan
34 under the general business loan program.

35 (d) NO DELEGATION OF AUTHORITY.—The authority conferred by this
36 section shall be exercised solely by SBA personnel and shall not be delegated
37 to other than SBA personnel.

38 **§ 203105. Level of participation in guaranteed loans**

39 (a) IN GENERAL.—Except as provided in subsections (b), (c), and (d),
40 in an agreement to participate in a loan on a deferred basis under the gen-

1 eral business loan program (including a loan made under the preferred lend-
2 ers program), participation by the Administrator shall be equal to—

3 (1) 75 percent of the balance of the financing outstanding at the
4 time of disbursement of the loan, if the balance exceeds \$150,000; or

5 (2) 85 percent of the balance of the financing outstanding at the
6 time of disbursement of the loan, if the balance is less than or equal
7 to \$150,000.

8 (b) REDUCED PARTICIPATION ON REQUEST.—

9 (1) IN GENERAL.—The guarantee percentage specified by subsection
10 (a) for a loan under the general business loan program may be reduced
11 on the request of the participating lender.

12 (2) PROHIBITION.—The Administrator shall not use the guarantee
13 percentage requested by a participating lender under paragraph (1) as
14 a criterion for establishing priorities in approving loan guarantee re-
15 quests under the general business loan program.

16 (c) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Not-
17 withstanding subsection (a), under an agreement to participate in a loan on
18 a deferred basis under the export working capital program, participation by
19 the Administrator shall be 90 percent.

20 (d) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement
21 to participate in a loan on a deferred basis under section 205110 of this
22 title, the participation by the Administrator shall not exceed 90 percent.

23 (e) REFINANCING OF INDEBTEDNESS.—On any portion of a loan used to
24 refinance indebtedness held by a bank or other lending institution, the Ad-
25 ministrator shall limit the amount of deferred participation to 80 percent
26 of the amount of the loan at the time of disbursement.

27 **§ 203106. Maximum loan amounts**

28 (a) TOTAL AMOUNT OUTSTANDING AND COMMITTED.—A loan shall not
29 be made to a borrower under the general business loan program—

30 (1) if the total amount outstanding and committed (on a deferred
31 basis, through a participation on an immediate basis, or directly) to the
32 borrower under the general business loan program would exceed
33 \$3,750,000 (or if the gross loan amount would exceed \$5,000,000); or

34 (2) in the case of a loan solely for the purposes provided in section
35 205110 of this title, if the total amount outstanding and committed (on
36 a deferred basis) to the borrower under the general business loan pro-
37 gram would not exceed \$4,500,000 (or if the gross loan amount would
38 not exceed \$5,000,000), of which not more than \$4,000,000 may be
39 used for working capital, supplies, or financings under section 205108
40 of this title for export purposes.

1 (b) LOAN AMOUNT.—A loan shall not be made under the general business
2 loan program, directly or in cooperation with a bank or other lending insti-
3 tution through an agreement to participate on an immediate basis, if the
4 amount of the loan would exceed \$350,000.

5 **§ 203107. Interest rates**

6 (a) MAXIMUM RATE PRESCRIBED BY THE ADMINISTRATOR.—Notwith-
7 standing the provisions of the constitution of any State or the laws of any
8 State limiting the rate or amount of interest that may be charged, taken,
9 received, or reserved, the maximum legal rate of interest on a financing
10 made on a deferred basis under the general business loan program shall not
11 exceed a rate prescribed by the Administrator.

12 (b) DIRECT LOANS AND IMMEDIATE PARTICIPATION LOANS.—The rate
13 of interest for the Administrator's share of any direct loan or immediate
14 participation loan under the general business loan program shall not exceed
15 the current average market yield on outstanding marketable obligations of
16 the United States with remaining periods to maturity comparable to the av-
17 erage maturities of such loans and adjusted to the nearest 0.125 percent,
18 and an additional amount as determined by the Administrator, but not to
19 exceed 1 percent per year.

20 (c) PREFERRED LENDERS PROGRAM.—The maximum interest rate for a
21 loan under the general business loan program that is guaranteed under the
22 preferred lenders program shall not exceed the maximum interest rate, as
23 determined by the Administrator, applicable to other loans guaranteed
24 under the general business loan program.

25 (d) LOANS TO ASSIST THE DISABLED.—In the case of a loan under the
26 general business loan program to assist a public or private organization for
27 the disabled or to assist a disabled individual as provided in section 205103
28 of this title, the interest rate shall be 3 percent per year.

29 (e) PAYMENT OF ACCRUED INTEREST.—

30 (1) IN GENERAL.—A bank or other lending institution making a
31 claim for payment on the guaranteed portion of a loan made under the
32 general business loan program shall be paid the accrued interest due
33 on the loan from the earliest date of default to the date of payment
34 of the claim at a rate not to exceed the rate of interest on the loan
35 on the date of default, minus 1 percent.

36 (2) LOANS SOLD ON SECONDARY MARKET.—If a loan described in
37 paragraph (1) is sold on the secondary market, the amount of interest
38 paid to a bank or other lending institution described in that paragraph
39 from the earliest date of default to the date of payment of the claim
40 shall be no more than the agreed upon rate, minus 1 percent.

1 (3) APPLICABILITY.—Paragraphs (1) and (2) do not apply to loans
2 made on or after October 1, 2000.

3 **§ 203108. Prepayment charges**

4 (a) IN GENERAL.—A borrower that prepays a loan guaranteed under the
5 general business loan program shall remit to the Administrator a subsidy
6 recoupment fee calculated in accordance with subsection (b) if—

- 7 (1) the loan is for a term of not less than 15 years;
8 (2) the prepayment is voluntary;
9 (3) the amount of prepayment in any calendar year is more than 25
10 percent of the outstanding balance of the loan; and
11 (4) the prepayment is made within the 1st 3 years after disburse-
12 ment of the loan proceeds.

13 (b) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged
14 under subsection (a) shall be—

- 15 (1) 5 percent of the amount of prepayment, if the borrower prepays
16 during the 1st year after disbursement;
17 (2) 3 percent of the amount of prepayment, if the borrower prepays
18 during the 2d year after disbursement; and
19 (3) 1 percent of the amount of prepayment, if the borrower prepays
20 during the 3d year after disbursement.

21 **§ 203109. Maximum term**

22 (a) IN GENERAL.—Except as provided in subsection (b), no loan (includ-
23 ing a loan renewal or extension) shall be made under the general business
24 loan program for a term or terms exceeding 25 years.

25 (b) EXCEPTION.—Any portion of a loan that is made under the general
26 business loan program for the purpose of acquiring real property or con-
27 structing, converting, or expanding a facility may have a term of 25 years
28 plus such additional period as is estimated may be required to complete the
29 construction, conversion, or expansion.

30 **§ 203110. Deferment of payments**

31 The Administrator may defer payments on the principal of a loan under
32 the general business loan program for a grace period, and use such other
33 methods as the Administrator considers necessary and appropriate, to en-
34 sure the successful establishment and operation of a small business concern.

35 **§ 203111. Guarantee fees**

36 (a) IN GENERAL.—With respect to a loan guaranteed under the general
37 business loan program (other than a loan that is repayable in 1 year or
38 less), the Administrator shall collect a guarantee fee, which shall be payable
39 by the participating lender, and may be charged to the borrower, as follows:

- 40 (1) A guarantee fee of not to exceed 2 percent of the deferred par-
41 ticipation share of a total loan amount that is not more than \$150,000.

1 (2) A guarantee fee of not to exceed 3 percent of the deferred par-
2 ticipation share of a total loan amount that is more than \$150,000,
3 but not more than \$700,000.

4 (3) A guarantee fee of not to exceed 3.5 percent of the deferred par-
5 ticipation share of a total loan amount that is more than \$700,000.

6 (4) In addition to the guarantee fee under paragraph (3), a guaran-
7 tee fee equal to 0.25 percent of any portion of the deferred participa-
8 tion share that is more than \$1,000,000.

9 (b) RETENTION OF CERTAIN FEES.—A lender participating in the gen-
10 eral business loan program may retain not more than 25 percent of a fee
11 collected under subsection (a)(1).

12 **§ 203112. Certified lenders program**

13 (a) IN GENERAL.—The Administrator may establish a certified lenders
14 program for lenders that establish their knowledge of the laws (including
15 regulations) concerning the guaranteed loan program and their proficiency
16 in program requirements.

17 (b) SUSPENSION OR REVOCATION.—The designation of a lender as a cer-
18 tified lender shall be suspended or revoked at any time that the Adminis-
19 trator determines that the lender is not adhering to regulations prescribed
20 by the Administrator or that the loss experience of the lender is excessive
21 as compared with that of other lenders, but the suspension or revocation
22 shall not affect any outstanding guarantee.

23 (c) UNIFORM AND SIMPLIFIED LOAN FORM.—To encourage all lending
24 institutions and other entities making loans under the general business loan
25 program to provide loans of \$50,000 or less in guarantees to eligible small
26 business loan applicants, the Administrator shall develop, and allow partici-
27 pating lenders to solely use, a uniform and simplified loan form for such
28 loans.

29 (d) LOAN LIQUIDATION.—

30 (1) IN GENERAL.—The Administrator may permit a lender partici-
31 pating in the certified lenders program to liquidate a loan made with
32 a guarantee from the Administrator in accordance with a liquidation
33 plan approved by the Administrator.

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

39 **§ 203113. Penalty fee on late payment**

40 The Administrator may permit a participating lender to impose and col-
41 lect a reasonable penalty fee on late payment of a loan guaranteed under

1 the general business loan program in an amount not to exceed 5 percent
2 of the monthly loan payment per month plus interest.

3 **§ 203114. Yearly fee**

4 (a) DEFINITION OF COST.—In this section, the term “cost” has the
5 meaning given the term in section 502 of the Federal Credit Reform Act
6 of 1990 (2 U.S.C. 661a).

7 (b) FEE.—With respect to a loan approved under the general business
8 loan program, the Administrator shall assess, collect, and retain a fee, not
9 to exceed 0.55 percent per year of the outstanding balance of the deferred
10 participation share of the loan, in an amount established once annually by
11 the Administrator in the Administrator’s annual budget request to Con-
12 gress, as necessary to reduce to zero the cost to the Administrator of mak-
13 ing guarantees under the general business loan program.

14 (c) PAYER.—The yearly fee assessed under subsection (b) shall be pay-
15 able by the participating lender and shall not be charged to the borrower.

16 (d) LOWERING OF BORROWER FEES.—If the Administrator determines
17 that fees paid by lenders and by small business borrowers for guarantees
18 under the general business loan program may be reduced, consistent with
19 reducing to zero the cost to the Administrator of making such guarantees—

20 (1) the Administrator shall first consider reducing fees paid by small
21 business borrowers under paragraphs (1) to (3) of section 203111(a)
22 of this title, to the maximum extent possible; and

23 (2) fees paid by small business borrowers shall not be increased
24 above the levels in effect on December 8, 2004.

25 **§ 203115. Notification to Congress of significant policy or**
26 **administrative changes**

27 Not later than 15 days before making any significant policy or adminis-
28 trative change affecting the operation of the general business loan program,
29 the Administrator shall notify the Committee on Small Business and Entre-
30 preneurship of the Senate and the Committee on Small Business of the
31 House of Representatives of the change.

32 **§ 203116. Pilot programs**

33 (a) DEFINITION OF PILOT PROGRAM.—In this section, the term “pilot
34 program” means a lending program initiative, project, innovation, or other
35 activity not specifically authorized by law.

36 (b) LIMITATION.—Not more than 10 percent of the number of loans
37 guaranteed in any fiscal year under the general business loan program may
38 be awarded as part of a pilot program commenced on or after October 1,
39 1996.

40 (c) LOW DOCUMENTATION LOAN PROGRAM.—

1 (1) IN GENERAL.—The Administrator may carry out the low docu-
2 mentation loan program for loans of \$100,000 or less only through
3 lenders with significant experience in making small business loans.

4 (2) REGULATIONS.—The Administrator shall promulgate regulations
5 defining the experience necessary for participation as a lender in the
6 low documentation loan program.

7 **§ 203117. Calculation of subsidy rate**

8 All fees, interest, and profits received and retained by the Administrator
9 under the general business loan program shall be included in the calcula-
10 tions made by the Director of the Office of Management and Budget to off-
11 set the cost (as defined in section 502 of the Federal Credit Reform Act
12 of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaran-
13 teeing loans under this subtitle.

14 **§ 203118. Leasing**

15 In addition to such other lease arrangements as the Administrator may
16 authorize, a borrower may permanently lease to 1 or more tenants not more
17 than 20 percent of any property constructed with the proceeds of a loan
18 guaranteed under the general business loan program if the borrower perma-
19 nently occupies and uses not less than 60 percent of the total business space
20 in the property.

21 **§ 203119. Real estate appraisals**

22 With respect to a loan under the general business loan program that is
23 secured by commercial real property, an appraisal of the property by a State
24 licensed or certified appraiser—

25 (1) shall be required by the Administrator in connection with any
26 such loan for more than \$250,000; or

27 (2) may be required by the Administrator or the lender in connection
28 with any such loan for \$250,000 or less, if an appraisal is necessary
29 for appropriate evaluation of creditworthiness.

30 **§ 203120. Express loan program**

31 (a) RESTRICTION TO EXPRESS LENDER.—The authority to make an ex-
32 press loan shall be limited to lenders that the Administrator considers quali-
33 fied to make express loans.

34 (b) EFFECT OF DESIGNATION.—Designation as an express lender for
35 purposes of making an express loan does not preclude the lender from tak-
36 ing any other action authorized by the Administrator for that lender under
37 the general business loan program.

38 (c) RETENTION OF DESIGNATION OF EXPRESS LENDER.—An express
39 lender shall retain that designation unless—

40 (1) the Administrator determines that the express lender has violated
41 the law (including regulations); or

1 (2) the Administrator modifies the requirements to be an express
2 lender and the lender no longer satisfies those requirements.

3 (d) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the
4 express loan program is \$350,000.

5 (e) OPTION TO PARTICIPATE.—Except as otherwise provided in this sec-
6 tion, the Administrator shall take no regulatory, policy, or administrative
7 action, without regard to whether the action requires notification under sec-
8 tion 203115 of this title, that has the effect of requiring a lender to make
9 an express loan.

10 (f) RENEWABLE ENERGY AND ENERGY EFFICIENCY.—The Administrator
11 may make a loan under the express loan program for the purpose of—

12 (1) purchasing a renewable energy system; or

13 (2) carrying out an energy efficiency project for a small business
14 concern.

15 **§ 203121. Loan application preparation and loan servicing**
16 **by qualified development companies**

17 Notwithstanding any other provision of law, a qualified development com-
18 pany (as defined in section 331101 of this title) may—

19 (1) prepare applications for deferred participation loans under the
20 general business loan program; and

21 (2) service loans under the general business loan program and
22 charge a reasonable fee for servicing the loans.

23 **§ 203122. Increased veteran/reservist participation program**

24 (a) DEFINITIONS.—In this section:

25 (1) COST.—The term “cost” has the meaning given the term in sec-
26 tion 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

27 (2) PILOT PROGRAM.—The term “pilot program” means the pilot
28 program established under subsection (b).

29 (3) VETERAN/RESERVIST PARTICIPATION LOAN.—The term “veteran/
30 reservist participation loan” means a loan made under the general busi-
31 ness loan program to a small business concern owned and controlled
32 by veterans or by reservists.

33 (b) ESTABLISHMENT.—The Administrator shall establish and carry out a
34 pilot program under which the Administrator shall reduce the fees for vet-
35 eran/reservist participation loans.

36 (c) DURATION.—The pilot program shall terminate at the end of the 2d
37 full fiscal year after the date on which the Administrator establishes the
38 pilot program.

39 (d) MAXIMUM PARTICIPATION.—A veteran/reservist participation loan
40 shall include the maximum participation levels by the Administrator per-
41 mitted for loans made under the general business loan program.

1 (e) FEES.—

2 (1) IN GENERAL.—The fee on a veteran/reservist participation loan
3 shall be equal to 50 percent of the fee otherwise applicable to that loan
4 under section 203111 of this title.

5 (2) WAIVER.—The Administrator may waive paragraph (1) for a fis-
6 cal year if—

7 (A) for the fiscal year before that fiscal year, the annual esti-
8 mated rate of default of veteran/reservist participation loans ex-
9 ceeds that of loans made under the general business loan program
10 that are not veteran/reservist participation loans;

11 (B) the cost to the Administrator of making loans under the
12 general business loan program is greater than zero and the cost
13 is directly attributable to the cost of making veteran/reservist par-
14 ticipation loans; and

15 (C) no additional source of revenue authority is available to re-
16 duce the cost of making loans under the general business loan pro-
17 gram to zero.

18 (3) EFFECT OF WAIVER.—If the Administrator waives the reduction
19 of fees under paragraph (2), the Administrator—

20 (A) shall not assess or collect fees in an amount greater than
21 necessary to ensure that the cost of the general business loan pro-
22 gram is not greater than zero; and

23 (B) shall reinstate the fee reductions under paragraph (1) when
24 the conditions in paragraph (2) no longer apply.

25 (4) NO INCREASE OF FEES.—The Administrator shall not increase
26 the fees under 203111 of this title on loans made under the general
27 business loan program that are not veteran/reservist participation loans
28 as a direct result of the pilot program.

29 (f) GAO REPORT.—

30 (1) IN GENERAL.—Not later than 1 year after the date on which the
31 pilot program terminates, the Comptroller General shall submit to the
32 Committee on Small Business of the House of Representatives and the
33 Committee on Small Business and Entrepreneurship of the Senate a
34 report on the pilot program.

35 (2) CONTENTS.—The report under paragraph (1) shall include—

36 (A) the number of veteran/reservist participation loans for which
37 fees were reduced under the pilot program;

38 (B) a description of the impact of the pilot program on the gen-
39 eral business loan program;

40 (C) an evaluation of the efficacy and potential fraud and abuse
41 of the pilot program; and

1 (D) recommendations for improving the pilot program.

2 **Chapter 205—Special Purpose Loans**

Sec.

205101. Applicability of chapter 203.

205102. Residential or commercial construction or rehabilitation for sale.

205103. The disabled.

205104. Unemployed or low-income individuals.

205105. Energy measures.

205106. Pollution control facilities.

205107. Certified development companies.

205108. Export working capital program.

205109. Qualified employee trusts.

205110. International trade.

205111. Business development.

205112. Closure of defense installations; termination of defense programs; veterans and certain other individuals associated with defense.

205113. Loans for energy efficient technologies.

205114. Export express program.

205115. Floor plan financing program.

3 **§ 205101. Applicability of chapter 203**

4 The provisions of chapter 203 apply to this chapter except to the extent
5 that any such provision is inconsistent with a provision of this chapter.

6 **§ 205102. Residential or commercial construction or reha-** 7 **ilitation for sale**

8 (a) IN GENERAL.—The Administrator may provide a loan under the gen-
9 eral business loan program to finance residential or commercial construction
10 or rehabilitation for sale.

11 (b) LIMITATION.—A loan under subsection (a) shall not be used primarily
12 for the acquisition of land.

13 **§ 205103. The disabled**

14 The Administrator may provide a guaranteed loan under the general busi-
15 ness loan program to assist a public or private organization for the disabled
16 or a disabled individual (including a service-disabled veteran) in establish-
17 ing, acquiring, or operating a small business concern.

18 **§ 205104. Unemployed or low-income individuals**

19 (a) IMPLEMENTATION.—The general business loan program shall be used
20 to—

21 (1) assist in the establishment, preservation, and strengthening of
22 small business concerns and improve the managerial skills employed in
23 small business concerns, with special attention to, and particular em-
24 phasis on the preservation or establishment of, small business concerns
25 that are—

26 (A) located in urban or rural areas with high proportions of un-
27 employed or low-income individuals; or

28 (B) owned by low-income individuals; and

29 (2) mobilize for those objectives private as well as public managerial
30 skills and resources.

1 (b) LOAN AUTHORITY.—The Administrator may provide a loan under the
2 general business loan program to a small business concern or to a qualified
3 person seeking to establish a small business concern if the Administrator
4 determines that providing the loan will further the purposes stated in sub-
5 section (a).

6 **§ 205105. Energy measures**

7 (a) IN GENERAL.—The Administrator may provide a loan under the gen-
8 eral business loan program to provide assistance (including startup assist-
9 ance) to a small business concern to enable the small business concern to
10 design architecturally, or engineer, manufacture, distribute, market, install,
11 or service, an energy measure.

12 (b) LIMITATION.—The proceeds of a loan under subsection (a) shall not
13 be used primarily for research and development.

14 **§ 205106. Pollution control facilities**

15 (a) IN GENERAL.—The Administrator may provide a deferred participa-
16 tion loan under the general business loan program to finance the planning,
17 design, or installation of a pollution control facility for the purposes speci-
18 fied in section 404 of the Small Business Investment Act of 1958 (15
19 U.S.C. 694–1), as in effect before the date of repeal of that section.

20 (b) LIMIT ON AMOUNT.—A loan under subsection (a) may not result in
21 a total amount outstanding and committed (on a deferred basis) to a bor-
22 rower under the general business loan program of more than \$1,000,000.

23 **§ 205107. Certified development companies**

24 The Administrator may provide financing under the general business loan
25 program to certified development companies for the purposes of, and subject
26 to the restrictions in, the certified development company program.

27 **§ 205108. Export working capital program**

28 (a) IN GENERAL.—Under a program to be known as the export working
29 capital program, the Administrator may provide an extension of credit,
30 standby letter of credit, revolving line of credit for export purposes, or other
31 financing to enable a small business concern (including a small business ex-
32 port trading company and a small business export management compan) to
33 develop a foreign market.

34 (b) RATE OF INTEREST.—A bank or participating lending institution may
35 establish such a rate of interest on a financing under subsection (a) as is
36 legal and reasonable.

37 (c) AMOUNT.—The amount of a financing under subsection (a) shall be
38 not more than \$5,000,000.

39 (d) FEES.—

1 (1) IN GENERAL.—For a financing under subsection (a), the Admin-
2 istrator shall collect the fee assessed under section 203114 of this title
3 not more frequently than once each year.

4 (2) UNTAPPED CREDIT.—The Administrator shall not assess a fee
5 on capital that is not accessed by the small business concern.

6 (e) CONSIDERATIONS.—When considering an application for financing
7 under subsection (a), the Administrator shall give weight to export-related
8 benefits, including—

9 (1) the opening of new markets for United States goods and services
10 abroad; and

11 (2) encouragement of the involvement of small business concerns (in-
12 cluding agricultural concerns) in the export market.

13 (f) MARKETING.—The Administrator shall aggressively market the export
14 working capital program to small business concerns.

15 **§ 205109. Qualified employee trusts**

16 (a) DEFINITION OF QUALIFIED EMPLOYEE TRUST.—In this section:

17 (1) TRUST MAINTAINED BY SMALL BUSINESS CONCERN.—The term
18 “qualified employee trust”, with respect to a small business concern,
19 means a trust—

20 (A) that forms part of an employee stock ownership plan (as de-
21 fined in section 4975(e) of the Internal Revenue Code of 1986 (26
22 U.S.C. 4975(e)) that—

23 (i) is maintained by the small business concern; and

24 (ii) provides that each participant in the plan is entitled to
25 direct the plan as to the manner in which voting rights under
26 qualifying employer securities (as defined in section 4975(e)
27 of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e))
28 that are allocated to the account of the participant are to be
29 exercised with respect to a corporate matter that (by law or
30 charter) must be decided by a majority vote of outstanding
31 common shares voted; and

32 (B) the trustee of which enters into an agreement with the Ad-
33 ministrator that is binding on the trust and on the small business
34 concern and provides that—

35 (i) a loan guaranteed under the general business loan pro-
36 gram shall be used solely for the purchase of qualifying em-
37 ployer securities of the small business concern;

38 (ii) all funds acquired by the small business concern in the
39 purchase shall be used by the small business concern solely
40 for the purposes for which the loan was guaranteed;

1 (iii) the small business concern will provide such funds as
2 are necessary for the timely repayment of the loan, and the
3 property of the small business concern shall be available as
4 security for repayment of the loan; and

5 (iv) all qualifying employer securities acquired by the trust
6 in the purchase shall be allocated to the accounts of partici-
7 pants in the plan who are entitled to share in the allocation,
8 and each participant has a nonforfeitable right, not later than
9 the date on which the loan is repaid, to all such qualifying
10 employer securities that are allocated to the participant's ac-
11 count.

12 (2) TRUST MAINTAINED BY EMPLOYEE ORGANIZATION.—A trust
13 maintained by an employee organization may be treated as a qualified
14 employee trust with respect to a small business concern in accordance
15 with regulations prescribed under subsection (f).

16 (b) IN GENERAL.—The Administrator may guarantee a loan under the
17 general business loan program to a qualified employee trust with respect to
18 a small business concern, on the same basis as if the qualified employee
19 trust were the same entity as the small business concern, for the purpose
20 of purchasing stock of the small business concern under a plan approved
21 by the Administrator that, when carried out, results in the qualified em-
22 ployee trust owning at least 51 percent of the stock of the small business
23 concern.

24 (c) PLAN.—

25 (1) SUBMISSION WITH APPLICATION.—A plan requiring approval
26 under subsection (b) shall be submitted to the Administrator by the
27 trustee of the qualified employee trust with the application for a loan
28 guarantee.

29 (2) AGREEMENT.—The plan shall include an agreement with the Ad-
30 ministrator that is binding on the qualified employee trust and on the
31 small business concern and provides that—

32 (A) not later than the date on which the loan guaranteed under
33 subsection (b) is repaid (or as soon after that date as is consistent
34 with the requirements of section 401(a) of the Internal Revenue
35 Code of 1986 (26 U.S.C. 401(a))), at least 51 percent of the total
36 stock of the small business concern shall be allocated to the ac-
37 counts of at least 51 percent of the employees of the small busi-
38 ness concern who are entitled to share in the allocation;

39 (B) there will be periodic reviews of the role in the management
40 of the small business concern of employees to whose accounts
41 stock is allocated; and

1 (C) there will be adequate management to ensure management
2 expertise and continuity.

3 (d) CRITERIA.—

4 (1) IN GENERAL.—Except as provided in paragraph (2), in determin-
5 ing whether to guarantee a loan under this section, the Administrator
6 shall not use the individual business experience or personal assets of
7 employee-owners as criteria.

8 (2) EXCEPTION.—To the extent that any employee-owner assumes
9 managerial responsibilities, the Administrator may consider the busi-
10 ness expertise of that employee-owner.

11 (e) TREATMENT OF CORPORATION AS SMALL BUSINESS CONCERN.—For
12 purposes of this section, a corporation that is controlled by any other person
13 shall be treated as a small business concern if the corporation would, after
14 the plan under subsection (c) is carried out, be treated as a small business
15 concern.

16 (f) REGULATIONS RELATING TO TREATMENT OF A TRUST MAINTAINED
17 BY AN EMPLOYEE ORGANIZATION.—The Administrator may prescribe regu-
18 lations under which a trust maintained by an employee organization may
19 be treated as a qualified employee trust with respect to a small business
20 concern if—

21 (1) the employee organization represents at least 51 percent of the
22 employees of the small business concern;

23 (2) the small business concern maintains a plan that—

24 (A) is an employee benefit plan that is designed to invest pri-
25 marily in qualifying employer securities (as defined in section
26 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C.
27 4975(e)));

28 (B) provides that each participant in the plan is entitled to di-
29 rect the plan as to the manner in which voting rights under quali-
30 fying employer securities that are allocated to the account of the
31 participant are to be exercised with respect to a corporate matter
32 that (by law or charter) must be decided by a majority vote of the
33 outstanding common shares voted;

34 (C) provides that each participant who is entitled to distribution
35 from the plan has a right, in the case of qualifying employer secu-
36 rities that are not readily tradable on an established market, to
37 require that the small business concern repurchase the securities
38 under a fair valuation formula; and

39 (D) meets such other requirements (similar to requirements ap-
40 plicable to employee stock ownership plans (as defined in section

1 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C.
2 4975(e))) as the Administrator may prescribe; and

3 (3) in the case of a loan guarantee under the general business loan
4 program, the employee organization enters into an agreement with the
5 Administrator that is described in subsection (a)(1)(B).

6 (g) REPORTS.—The Administrator shall—

7 (1) compile a separate list of applications for assistance under this
8 section, indicating which applications are accepted and which denied;
9 and

10 (2) periodically submit to Congress a report on the status of em-
11 ployee-owned firms assisted by the Administrator.

12 **§ 205110. International trade**

13 (a) IN GENERAL.—If the Administrator determines that a loan guaran-
14 teed under the general business loan program will allow an eligible small
15 business concern that is engaged in or adversely affected by international
16 trade to improve its competitive position, the Administrator may provide a
17 loan guarantee to assist the small business concern—

18 (1) in the financing of the acquisition, construction, renovation, mod-
19 ernization, improvement, or expansion of productive facilities or equip-
20 ment to be used in the United States in the production of a good or
21 service involved in international trade;

22 (2) in the refinancing of existing indebtedness that is not structured
23 with reasonable terms and conditions, including any debt that qualifies
24 for refinancing under any other provision of this division; or

25 (3) by providing working capital.

26 (b) SECURITY.—

27 (1) IN GENERAL.—Except as provided in paragraph (2), a loan
28 under this section shall be secured by a 1st lien position or 1st mort-
29 gage on the property or equipment financed by the loan or on other
30 assets of the small business concern.

31 (2) EXCEPTION.—A loan under this section may be secured by a 2d
32 lien position on the property or equipment financed by the loan or on
33 other assets of the small business concern if the Administrator deter-
34 mines that the lien provides adequate assurance of the payment of the
35 loan.

36 (c) ENGAGEMENT IN INTERNATIONAL TRADE.—For purposes of this sec-
37 tion, a small business concern shall be considered to be engaged in inter-
38 national trade if, as determined by the Administrator, the small business
39 concern is in a position to expand existing export markets or develop new
40 export markets.

1 (d) ADVERSE EFFECT OF INTERNATIONAL TRADE.—For purposes of this
2 section, a small business concern shall be considered to be adversely affected
3 by international trade if, as determined by the Administrator, the small
4 business concern—

5 (1) is confronting increased competition with foreign firms in the rel-
6 evant market; and

7 (2) is injured by such competition.

8 (e) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of sub-
9 section (d)(2), the Administrator shall accept any finding of injury by the
10 International Trade Commission or any finding of injury by the Secretary
11 of Commerce under chapter 3 of title II of the Trade Act of 1974 (19
12 U.S.C. 2341 et seq.).

13 (f) LIST OF EXPORT FINANCE LENDERS.—

14 (1) PUBLICATION.—The Administrator shall publish an annual list
15 of the banks and participating lending institutions that, during the 1-
16 year period ending on the date of publication of the list, have made
17 loans guaranteed by the Administrator under—

18 (A) this section;

19 (B) section 205108 of this title; or

20 (C) section 205114 of this title.

21 (2) AVAILABILITY.—The Administrator shall—

22 (A) post the list published under paragraph (1) on the SBA
23 website; and

24 (B) make the list available, on request, at each SBA district of-
25 fice.

26 **§ 205111. Business development**

27 (a) IN GENERAL.—The Administrator may make a loan under the gen-
28 eral business loan program to a small business concern that is eligible for
29 assistance under the business development program.

30 (b) REQUIREMENTS.—Assistance may be provided under subsection (a) if
31 the Administrator determines that—

32 (1) the type and amount of assistance requested by a small business
33 concern is not otherwise available on reasonable terms from other
34 sources;

35 (2) with the assistance, the small business concern has a reasonable
36 prospect for operating soundly and profitably within a reasonable pe-
37 riod of time;

38 (3) the proceeds of the assistance will be used within a reasonable
39 time—

1 (A) for plant construction, conversion, or expansion, including
2 the acquisition of equipment, facilities, machinery, supplies, or ma-
3 terial; or

4 (B) to supply the small business concern with working capital
5 to be used in the manufacture of articles, equipment, supplies, or
6 material for defense or civilian production or as may be necessary
7 to ensure a well-balanced national economy; and

8 (4) the assistance is of such sound value as reasonably to ensure that
9 the terms under which the assistance is provided will not be breached
10 by the small business concern.

11 (c) LIMIT ON AMOUNT.—

12 (1) IN GENERAL.—No loan shall be made under this section if the
13 total amount outstanding and committed (on a deferred basis, through
14 a participation on an immediate basis, or directly) to the borrower
15 under the general business loan program would exceed \$750,000.

16 (2) AMOUNT OF PARTICIPATION.—Subject to paragraph (1), in an
17 agreement to participate in a loan on a deferred (guaranteed) basis,
18 participation by the Administrator shall be not less than 85 percent of
19 the balance of the financing outstanding at the time of disbursement.

20 (d) RATE OF INTEREST.—The rate of interest on a financing made on
21 a deferred (guaranteed) basis shall be an amount that is legal and reason-
22 able.

23 (e) LIMITATIONS.—

24 (1) IN GENERAL.—A financing under this section shall be subject to
25 the limitations stated in this subsection.

26 (2) IMMEDIATE FINANCING.—No immediate participation may be
27 purchased unless it is shown that a deferred participation is not avail-
28 able.

29 (3) DIRECT FINANCING.—No direct financing may be made unless
30 it is shown that a participation is unavailable.

31 (f) SECURED DEBT INSTRUMENT.—A direct loan or the Administrator's
32 share of an immediate participation loan under this section shall be any se-
33 cured debt instrument—

34 (1) that is subordinated by its terms to all other borrowings of the
35 issuer;

36 (2) the rate of interest on which does not exceed the current average
37 market yield on outstanding marketable obligations of the United
38 States with remaining periods to maturity comparable to the average
39 maturities of such loans and adjusted to the nearest 0.125 percent;

40 (3) the term of which is not more than 25 years;

1 (4) the principal on which is amortized at such a rate as the Admin-
2 istrator considers appropriate; and

3 (5) the interest on which is payable not less often than annually.

4 **§ 205112. Closure of defense installations; termination of de-**
5 **fense programs; veterans and certain other indi-**
6 **viduals associated with defense**

7 (a) DEFINITION OF QUALIFIED INDIVIDUAL.—In this section, the term
8 “qualified individual” means—

9 (1) a member of the Armed Forces honorably discharged from active
10 duty involuntarily or under a program providing bonuses or other in-
11 ducements to encourage voluntary separation or early retirement;

12 (2) a civilian employee of the Department of Defense involuntarily
13 separated from Federal service or retired under a program offering in-
14 ducements to encourage early retirement; or

15 (3) an employee of a prime contractor, subcontractor, or supplier at
16 any tier of a Department of Defense program whose employment is in-
17 voluntarily terminated (or voluntarily terminated under a program of-
18 fering inducements to encourage voluntary separation or early retire-
19 ment) due to the termination or substantial reduction of a Department
20 of Defense program.

21 (b) LOANS.—The Administrator may make a loan on a guaranteed basis
22 under the general business loan program—

23 (1) to a small business concern that has been (or can reasonably be
24 expected to be) detrimentally affected by—

25 (A) the closure or substantial reduction of a Department of De-
26 fense installation; or

27 (B) the termination or substantial reduction of a Department
28 of Defense program on which the small business concern was a
29 prime contractor or subcontractor or supplier at any tier; or

30 (2) to a qualified individual or a veteran seeking to establish (or ac-
31 quire) and operate a small business concern.

32 (c) RESOLUTION OF DOUBT.—Recognizing that greater risk may be asso-
33 ciated with a loan to a small business concern described in subsection
34 (b)(1), in making a determination regarding the sound value of the proposed
35 loan under section 203104, any reasonable doubt concerning the small busi-
36 ness concern’s proposed business plan for transition to nondefense-related
37 markets shall be resolved in favor of the loan applicant.

38 (d) AMOUNTS OF LOANS.—Loans under this section shall be authorized
39 in such amounts as are provided in advance in appropriation Acts for the
40 purposes of loans under this section.

1 (e) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance
2 under this section, the Administrator shall develop procedures to ensure, to
3 the maximum extent practicable, that the assistance is used for projects
4 that—

5 (1) have the greatest potential for—

6 (A) creating new jobs for individuals whose employment is invol-
7 untarily terminated due to reductions in Federal defense expendi-
8 tures; or

9 (B) preventing the loss of jobs by employees of small business
10 concerns described in subsection (b)(1); and

11 (2) have substantial potential for stimulating new economic activity
12 in communities most affected by reductions in Federal defense expendi-
13 tures.

14 **§ 205113. Loans for energy efficient technologies**

15 (a) DEFINITIONS.—In this section:

16 (1) COST.—The term “cost” has the meaning given the term in sec-
17 tion 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

18 (2) COVERED ENERGY EFFICIENCY LOAN.—The term “covered en-
19 ergy efficiency loan” means a loan—

20 (A) made under the general business loan program; and

21 (B) the proceeds of which are used to—

22 (i) purchase energy efficient designs, equipment, or fix-
23 tures; or

24 (ii) reduce the energy consumption of the borrower by 10
25 percent or more.

26 (3) PILOT PROGRAM.—The term “pilot program” means the pilot
27 program established under subsection (b).

28 (b) ESTABLISHMENT.—The Administrator shall establish and carry out a
29 pilot program under which the Administrator shall reduce the fees for cov-
30 ered energy efficiency loans.

31 (c) DURATION.—The pilot program shall terminate at the end of the 2d
32 full fiscal year after the date on which the Administrator establishes the
33 pilot program.

34 (d) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall in-
35 clude the maximum participation levels by the Administrator permitted for
36 loans made under this division.

37 (e) FEES.—

38 (1) IN GENERAL.—The fee on a covered energy efficiency loan shall
39 be equal to 50 percent of the fee otherwise applicable to that loan
40 under 203111 of this title.

1 (2) WAIVER.—The Administrator may waive paragraph (1) for a fis-
2 cal year if—

3 (A) for the fiscal year before that fiscal year, the annual rate
4 of default of covered energy efficiency loans exceeds that of loans
5 made under this division that are not covered energy efficiency
6 loans;

7 (B) the cost to the Administrator of making loans under this
8 division—

9 (i) is greater than zero; and

10 (ii) is directly attributable to the cost of making covered
11 energy efficiency loans; and

12 (C) no additional sources of revenue authority are available to
13 reduce the cost of making loans under this division to zero.

14 (3) EFFECT OF WAIVER.—If the Administrator waives the reduction
15 of fees under paragraph (2), the Administrator—

16 (A) shall not assess or collect fees in an amount greater than
17 necessary to ensure that the cost of the program under this divi-
18 sion is not greater than zero; and

19 (B) shall reinstate the fee reductions under paragraph (1) when
20 the conditions in paragraph (2) no longer apply.

21 (4) NO INCREASE OF FEES.—The Administrator shall not increase
22 the fees under section 203111 of this title on loans made under this
23 division that are not covered energy efficiency loans as a direct result
24 of the pilot program.

25 (f) GAO REPORT.—

26 (1) IN GENERAL.—Not later than 1 year after the date on which the
27 pilot program terminates, the Comptroller General shall submit to the
28 Committee on Small Business of the House of Representatives and the
29 Committee on Small Business and Entrepreneurship of the Senate a
30 report on the pilot program.

31 (2) CONTENTS.—The report under paragraph (1) shall include—

32 (A) the number of covered energy efficiency loans for which fees
33 were reduced under the pilot program;

34 (B) a description of the energy efficiency savings with the pilot
35 program;

36 (C) a description of the impact of the pilot program on the pro-
37 gram under this division;

38 (D) an evaluation of the efficacy and potential fraud and abuse
39 of the pilot program; and

40 (E) recommendations for improving the pilot program.

1 **§ 205114. Export express program**

2 (a) IN GENERAL.—The Administrator may guarantee the timely payment
3 of an express loan to a small business concern made for an export develop-
4 ment activity.

5 (b) LEVEL OF PARTICIPATION.—

6 (1) MAXIMUM AMOUNT.—The maximum amount of an express loan
7 guaranteed under this section shall be \$500,000.

8 (2) PERCENTAGE.—For an express loan guaranteed under this sec-
9 tion, the Administrator shall guarantee—

10 (A) 90 percent of a loan that is not more than \$350,000; and

11 (B) 75 percent of a loan that is more than \$350,000 and not
12 more than \$500,000.

13 **§ 205115. Floor plan financing program**

14 (a) DEFINITION OF ELIGIBLE RETAIL GOOD.—In this section:

15 (1) IN GENERAL.—The term “eligible retail good” means a good for
16 which a title may be obtained under State law.

17 (2) INCLUSIONS.—The term “eligible retail good” includes an auto-
18 mobile, recreational vehicle, boat, or manufactured home.

19 (b) PROGRAM.—The Administrator may guarantee the timely payment of
20 an open-end extension of credit to a small business concern, the proceeds
21 of which may be used for the purchase of eligible retail goods for resale.

22 (c) AMOUNT.—An open-end extension of credit guaranteed under this sec-
23 tion shall be in an amount not less than \$500,000 and not more than
24 \$5,000,000.

25 (d) TERM.—An open-end extension of credit guaranteed under this sec-
26 tion shall have a term of not more than 5 years.

27 (e) GUARANTEE PERCENTAGE.—The Administrator may guarantee—

28 (1) not less than 60 percent of an open-end extension of credit under
29 this section; and

30 (2) not more than 75 percent of an open-end extension of credit
31 under this paragraph.

32 (f) ADVANCE RATE.—The lender for an open-end extension of credit
33 guaranteed under this section may allow the borrower to draw funds on the
34 line of credit in an amount equal to not more than 100 percent of the value
35 of the eligible retail goods to be purchased.

36 (g) REPEAL.—Effective September 30, 2013, this section, the item relat-
37 ing to this section in the table of contents of this chapter, and the para-
38 graph defining “floor plan financing program” in section 101102 of this
39 title are repealed.

1 **Chapter 207—Small Business Lending**
2 **Companies and Non-Federally Regulated**
3 **Lenders**

Sec.

207101. Authority to regulate.
207102. Capital directive.
207103. Civil action.
207104. Revocation or suspension of loan authority; cease and desist orders.
207105. Removal or suspension of management officials.
207106. Appointment of receiver.
207107. Taking of possession of assets.
207108. Reports.

4 **§ 207101. Authority to regulate**

5 The Administrator—

6 (1) may supervise the safety and soundness of small business lending
7 companies and non-federally regulated lenders;

8 (2) in accordance with the purposes of this subtitle, may—

9 (A) regulate small business lending companies;

10 (B) set capital standards for small business lending companies;

11 (C) examine small business lending companies; and

12 (D) enforce laws governing small business lending companies;

13 and

14 (3) in accordance with the purposes of this subtitle, may—

15 (A) regulate non-federally regulated lenders;

16 (B) examine non-federally regulated lenders; and

17 (C) enforce laws governing the lending activities of non-federally
18 regulated lenders under the general business loan program.

19 **§ 207102. Capital directive**

20 (a) IN GENERAL.—If the Administrator determines that a small business
21 lending company is being operated in an imprudent manner, the Adminis-
22 trator may, in addition to any other action authorized by law, issue a direc-
23 tive to the small business lending company to increase capital to such level
24 as the Administrator determines will result in the safe and sound operation
25 of the small business lending company.

26 (b) LIMIT ON DELEGABILITY.—The Administrator may not delegate the
27 authority granted under subsection (a) except to an Associate Deputy Ad-
28 ministrator.

29 (c) REGULATIONS.—The Administrator shall issue regulations outlining
30 the conditions under which the Administrator may determine the level of
31 capital under subsection (a).

32 **§ 207103. Civil action**

33 If a small business lending company violates this subtitle or subtitle I,
34 the Administrator may bring a civil action in United States district court

1 to terminate the rights, privileges, and franchises of the small business lend-
2 ing company under this subtitle or subtitle I.

3 **§ 207104. Revocation or suspension of loan authority; cease**
4 **and desist orders**

5 (a) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

6 (1) IN GENERAL.—The Administrator may revoke or suspend the au-
7 thority of a small business lending company or a non-federally regu-
8 lated lender to make, service, or liquidate business loans under the gen-
9 eral business loan program—

10 (A) for false statements knowingly made in any written submis-
11 sion required under this subtitle;

12 (B) for omission of a material fact from any written submission
13 required under this subtitle;

14 (C) for willful or repeated violation of this subtitle;

15 (D) for willful or repeated violation of any condition imposed by
16 the Administrator with respect to any application, request, or
17 agreement under this subtitle; or

18 (E) for violation of any cease and desist order of the Adminis-
19 trator under this chapter.

20 (2) LIMITATION ON DELEGABILITY.—The Administrator may dele-
21 gate power to revoke or suspend authority under paragraph (1) only
22 to the Deputy Administrator and only if the Administrator is unavail-
23 able to take the action.

24 (3) PROCEDURE.—

25 (A) IN GENERAL.—Except as provided in subparagraph (B), the
26 Administrator may revoke or suspend authority under paragraph
27 (1) only after a hearing under subsection (c).

28 (B) SUSPENSION BEFORE HEARING.—

29 (i) IN GENERAL.—The Administrator, after finding ex-
30 traordinary circumstances and in order to protect the finan-
31 cial or legal position of the United States, may issue a sus-
32 pension order without conducting a hearing under subsection
33 (c).

34 (ii) HEARING.—If the Administrator issues a suspension
35 under clause (i), the Administrator shall, within 2 business
36 days after issuance of the suspension, follow the procedure
37 specified in subsection (c).

38 (C) ACTION BY THE ADMINISTRATOR AFTER HEARING BY AD-
39 MINISTRATIVE LAW JUDGE.—

40 (i) IN GENERAL.—A revocation or suspension under para-
41 graph (1) shall be made by the Administrator, except that the

1 Administrator shall delegate to an administrative law judge
2 appointed under section 3105 of title 5 the authority to con-
3 duct any hearing required under subsection (c).

4 (ii) BASIS OF DECISION.—The Administrator shall base the
5 decision to revoke or suspend on the record of the hearing.

6 (4) EFFECTIVE PERIOD OF SUSPENSION.—A suspension under para-
7 graph (1) shall remain in effect until the Administrator makes a deci-
8 sion under paragraph (3)(C) to permanently revoke the authority of the
9 small business lending company or non-federally regulated lender, sus-
10 pend the authority for a time certain, or terminate the suspension.

11 (5) NOTIFICATION OF BORROWERS.—On revocation of the authority
12 of a small business lending company or non-federally regulated lender
13 under paragraph (1), the small business lending company or non-feder-
14 ally regulated lender shall, and the Administrator may, notify borrow-
15 ers of the revocation and of the appointment of a new entity to service
16 the borrowers' loans.

17 (b) CEASE AND DESIST ORDERS.—

18 (1) IN GENERAL.—If a small business lending company, a non-feder-
19 ally regulated lender, or other person violates this subtitle or subtitle
20 I or is engaging or is about to engage in any act or practice that con-
21 stitutes or will constitute a violation of this subtitle or subtitle I, the
22 Administrator, after an opportunity for hearing under subsection (c),
23 may order that—

24 (A) the small business lending company, non-federally regulated
25 lender, or other person cease and desist from engaging in the act
26 or practice or in any failure to act;

27 (B) the small business lending company, non-federally regulated
28 lender, or other person take such action or to refrain from such
29 action as the Administrator considers necessary to ensure compli-
30 ance with this subtitle; or

31 (C) the authority of the small business lending company or non-
32 federally regulated lender to lend be suspended under subsection
33 (a).

34 (2) LIMITATION ON DELEGABILITY.—The Administrator may dele-
35 gate the authority under paragraph (1) only to the Deputy Adminis-
36 trator and only if the Administrator is unavailable to take the action.

37 (3) ORDER BEFORE HEARING.—

38 (A) IN GENERAL.—The Administrator, after finding extraor-
39 dinary circumstances and in order to protect the financial or legal
40 position of the United States, may issue a cease and desist order
41 without conducting a hearing under subsection (c).

136

1 (B) HEARING.—If the Administrator issues a cease and desist
2 order under subparagraph (A), the Administrator shall within 2
3 business days follow the procedures specified in subsection (c).

4 (c) PROCEDURE.—

5 (1) ORDER TO SHOW CAUSE.—

6 (A) IN GENERAL.—Before revoking or suspending authority
7 under subsection (a) or issuing a cease and desist order under
8 subsection (b), the Administrator shall serve an order to show
9 cause on the small business lending company, non-federally regu-
10 lated lender, or other person why an order revoking or suspending
11 the authority or a cease and desist order should not be issued.

12 (B) CONTENTS.—An order under subparagraph (A) shall—

13 (i) contain a statement of the matters of fact and law as-
14 serted by the Administrator and the legal authority and juris-
15 diction under which a hearing is to be held; and

16 (ii) state that a hearing will be held before an administra-
17 tive law judge at a time and place stated in the order.

18 (2) HEARING.—A hearing shall be conducted under sections 554,
19 556, and 557 of title 5.

20 (3) ORDER OF REVOCATION OR SUSPENSION; CEASE AND DESIST
21 ORDER.—

22 (A) IN GENERAL.—If, after hearing or a waiver of hearing, the
23 Administrator determines that an order revoking or suspending
24 the authority or a cease and desist order should be issued, the Ad-
25 ministrator shall promptly issue the order.

26 (B) CONTENTS.—An order under subparagraph (A) shall—

27 (i) include a statement of the findings of the Administrator
28 and the grounds and reasons for the findings; and

29 (ii) specify the effective date of the order.

30 (C) SERVICE.—The Administrator shall cause an order under
31 subparagraph (A) to be served on the small business lending com-
32 pany, non-federally regulated lender, or other person that is sub-
33 ject to the order.

34 (4) WITNESSES.—A witness summoned before the Administrator
35 shall be paid by the party at whose instance the witness is called the
36 same fees and mileage that are paid witnesses in the courts of the
37 United States.

38 (d) FINAL AGENCY ACTION.—An order under subsection (c)(3) is final
39 agency action for purposes of chapter 7 of title 5.

1 (e) JUDICIAL REVIEW.—An adversely affected party shall have 20 days
2 from the date of issuance of an order under subsection (c)(3) to seek judi-
3 cial review in United States district court.

4 **§ 207105. Removal or suspension of management officials**

5 (a) DEFINITION OF MANAGEMENT OFFICIAL.—In this section, the term
6 “management official” means an officer, director, general partner, manager,
7 employee, agent, or other participant in the management of the affairs of
8 a small business lending company’s or non-federally regulated lender’s ac-
9 tivities under the general business loan program.

10 (b) REMOVAL OF MANAGEMENT OFFICIAL.—

11 (1) NOTICE.—The Administrator may serve on a management offi-
12 cial a written notice of the Administrator’s intention to remove that
13 management official if, in the opinion of the Administrator, the man-
14 agement official—

15 (A) willfully and knowingly commits a substantial violation of—

16 (i) this subtitle or subtitle I (including any regulation is-
17 sued under this subtitle or subtitle I);

18 (ii) a final cease and desist order under this subtitle; or

19 (iii) any agreement under this subtitle by—

20 (I) the management official; or

21 (II) the small business lending company or non-feder-
22 ally regulated lender in which the management official is
23 a participant; or

24 (B) willfully and knowingly commits a substantial breach of a
25 fiduciary duty of that participant as a management official, if the
26 violation or breach of fiduciary duty is one involving personal dis-
27 honesty on the part of the management official.

28 (2) CONTENTS.—A notice under paragraph (1) shall—

29 (A) contain a statement of the facts constituting grounds for
30 the notice; and

31 (B) state a time and place at which a hearing under paragraph
32 (3) will be held on the notice.

33 (3) HEARING.—

34 (A) TIMING.—A hearing under sections 554, 556, and 557 of
35 title 5 shall be held not earlier than 30 nor later than 60 days
36 after the date of service of notice of the hearing, unless an earlier
37 or a later date is set by the Administrator at the request of—

38 (i) the management official, for good cause; or

39 (ii) the Attorney General.

40 (B) CONSENT.—Unless the management official appears at a
41 hearing under this subsection in person or by an authorized rep-

1 representative, the management official shall be deemed to have con-
2 sented to the issuance of an order of removal under paragraph (1).

3 (4) ORDER OF REMOVAL.—

4 (A) IN GENERAL.—In the event of consent under paragraph
5 (3)(B), or if on the record made at a hearing under this section,
6 the Administrator finds that any of the grounds specified in the
7 notice of removal has been established, the Administrator may
8 issue such orders of removal from office as the Administrator con-
9 siders appropriate.

10 (B) EFFECTIVENESS.—An order under subparagraph (A)
11 shall—

12 (i) take effect 30 days after the date of service on the sub-
13 ject small business lending company or non-federally regu-
14 lated lender and the management official concerned (except in
15 the case of an order issued on consent as described in para-
16 graph (3)(B), which shall become effective at the time speci-
17 fied in the order); and

18 (ii) remain effective and enforceable, except to such extent
19 as the order is stayed, modified, terminated, or set aside by
20 action of the Administrator or a court in accordance with this
21 chapter.

22 (e) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

23 (1) IN GENERAL.—To protect a small business lending company, a
24 non-federally regulated lender, or the interests of SBA or the United
25 States, the Administrator may suspend from office or prohibit from
26 further participation in any manner in the management or conduct of
27 the affairs of a small business lending company or non-federally regu-
28 lated lender a management official by written notice to that effect
29 served on the management official.

30 (2) PROHIBITED ACTIVITIES.—A suspension or prohibition under
31 paragraph (1) may prohibit the management official from making,
32 servicing, reviewing, approving, or liquidating any loan under the gen-
33 eral business loan program.

34 (3) EFFECTIVENESS.—A suspension or prohibition under paragraph
35 (1)—

36 (A) shall take effect on service of notice under subsection (b);
37 and

38 (B) unless stayed by a court in proceedings under paragraph
39 (4), shall remain in effect—

1 (i) pending the completion of the administrative proceed-
2 ings pursuant to a notice of intention to remove served under
3 subsection (b); and

4 (ii) until such time as the Administrator dismisses the
5 charges specified in the notice, or, if an order of removal or
6 prohibition is issued against the management official, until
7 the effective date of any such order.

8 (4) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not
9 later than 10 days after a management official is suspended or prohib-
10 ited from participation under paragraph (1), the management official
11 may apply to a United States district court for a stay of the suspension
12 or prohibition pending the completion of the administrative proceedings
13 pursuant to a notice of intent to remove served on the management of-
14 ficial under subsection (b).

15 (d) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

16 (1) IN GENERAL.—If a management official is charged in an infor-
17 mation, indictment, or complaint authorized by a United States attor-
18 ney, with a felony involving dishonesty or breach of trust, the Adminis-
19 trator may, by written notice served on the management official, sus-
20 pend the management official from office or prohibit the management
21 official from further participation in any manner in the management
22 or conduct of the affairs of the small business lending company or non-
23 federally regulated lender in which the management official is a partici-
24 pant described in subsection (a).

25 (2) EFFECTIVENESS.—A suspension or prohibition under paragraph
26 (1) shall remain in effect until the information, indictment, or com-
27 plaint is finally disposed of, or until terminated by the Administrator
28 or by order of a United States district court.

29 (3) AUTHORITY ON CONVICTION.—

30 (A) IN GENERAL.—If a judgment of conviction with respect to
31 an offense described in paragraph (1) is entered against a man-
32 agement official, at such time as the judgment is not subject to
33 further judicial review, the Administrator may issue and serve on
34 the management official an order removing the management offi-
35 cial, effective on service of a copy of the order on the small busi-
36 ness lending company or non-federally regulated lender in which
37 the management official is a participant described in subsection
38 (a).

39 (B) JUDGMENT NOT SUBJECT TO FURTHER JUDICIAL RE-
40 VIEW.—For purposes of subparagraph (A), further judicial review

1 does not include the possibility of review of a petition for a writ
2 of habeas corpus.

3 (4) AUTHORITY ON DISMISSAL OR OTHER DISPOSITION.—A finding
4 of not guilty or other disposition of charges described in paragraph (1)
5 shall not preclude the Administrator from instituting proceedings under
6 section 207104 of this title.

7 (e) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR NON-
8 FEDERALLY REGULATED LENDER.—A copy of a notice required to be
9 served on a management official under this chapter shall also be served on
10 the small business lending company or non-federally regulated lender in
11 which the management official is a participant described in subsection (a).

12 (f) DECISION.—After a hearing under this section, and not later than 30
13 days after the Administrator notifies the parties that the case has been sub-
14 mitted for final decision, the Administrator shall—

15 (1) render a decision in the matter (which shall include findings of
16 fact on which its decision is predicated); and

17 (2) issue and cause to be served on each party to the proceeding an
18 order or orders consistent with this chapter.

19 (g) FINAL AGENCY ACTION.—A decision under subsection (f) shall con-
20 stitute final agency action for purposes of chapter 7 of title 5.

21 (h) JUDICIAL REVIEW.—An adversely affected party shall have 20 days
22 from the date of issuance of the order to seek judicial review in United
23 States district court.

24 **§ 207106. Appointment of receiver**

25 (a) IN GENERAL.—In a civil action under this division, the court may—

26 (1) take exclusive jurisdiction over a small business lending company
27 or non-federally regulated lender; and

28 (2) appoint a receiver to hold and administer the assets of the small
29 business lending company or non-federally regulated lender.

30 (b) APPOINTMENT OF ADMINISTRATOR.—On request of the Adminis-
31 trator, the court may appoint the Administrator as a receiver under sub-
32 section (a).

33 **§ 207107. Taking of possession of assets**

34 (a) TAKING OF POSSESSION OF LOAN PORTFOLIO.—If a small business
35 lending company or non-federally regulated lender is not in compliance with
36 capital requirements or is insolvent, the Administrator may take possession
37 of the portfolio of loans guaranteed by the Administrator and sell the loans
38 to a 3d party by means of a receiver appointed under section 207106 of
39 this title.

40 (b) TAKING OF POSSESSION OF SERVICING ACTIVITIES.—If a small busi-
41 ness lending company or non-federally regulated lender is not in compliance

1 with capital requirements or is insolvent or otherwise operating in an unsafe
2 and unsound condition, the Administrator may take possession of servicing
3 activities of loans that are guaranteed by the Administrator and sell the
4 servicing rights to a 3d party by means of a receiver appointed under sec-
5 tion 207106 of this title.

6 **§ 207108. Reports**

7 (a) CIVIL PENALTY FOR FAILURE TO FILE.—

8 (1) IN GENERAL.—A small business lending company or non-feder-
9 ally regulated lender that violates a regulation or written directive is-
10 sued by the Administrator regarding the filing of a regular or special
11 report shall pay to the United States a civil penalty of not more than
12 \$5,000 for each day of the continuance of the failure to file the report,
13 unless it is shown that the violation is due to reasonable cause and not
14 due to willful neglect.

15 (2) ENFORCEMENT.—A civil penalty under paragraph (1) may be en-
16 forced in a civil action brought by the Administrator.

17 (3) INAPPLICABILITY TO CERTAIN SMALL BUSINESS LENDING COM-
18 PANIES.—Paragraph (1) does not apply to an affiliate of a small busi-
19 ness lending company that procures at least 10 percent of its annual
20 purchasing requirements from small manufacturers.

21 (b) EXEMPTION.—

22 (1) IN GENERAL.—If the Administrator determines that granting an
23 exemption would not be inconsistent with the public interest or the pro-
24 tection of SBA, the Administrator may exempt a small business lending
25 company or non-federally regulated lender from subsection (a)—

26 (A) in whole or in part; and

27 (B) on such terms and conditions and for such period of time
28 as the Administrator considers necessary and appropriate.

29 (2) PROCEDURE.—The Administrator may grant an exemption under
30 paragraph (1)—

31 (A) by regulation prescribed after an opportunity for notice and
32 comment; or

33 (B) on application of an interested party, at any time previous
34 to a violation described in subsection (a), by order, after notice
35 and opportunity for hearing under sections 554, 556, and 557 of
36 title 5.

37 (c) ALTERNATIVE REQUIREMENTS.—The Administrator may for purposes
38 of this section make any alternative requirement that the Administrator
39 considers to be appropriate to a situation.

1 **Division C—Intermediary Lending Pilot**
2 **Program**
3 **Chapter 211—Intermediary Lending Pilot**
4 **Program**

Sec.

- 211101. Definitions.
- 211102. Establishment.
- 211103. Purposes.
- 211104. Loans to eligible intermediaries.
- 211105. Loans to small business concerns.
- 211106. Regulations.
- 211107. Availability of funds.
- 211108. Termination of authority.

5 **§ 211101. Definitions**

6 In this chapter:

7 (1) ELIGIBLE INTERMEDIARY.—

8 (A) IN GENERAL.—The term “eligible intermediary” means a
9 private, nonprofit entity that—

10 (i) seeks or has been awarded a loan from the Adminis-
11 trator to make loans to small business concerns under this
12 chapter; and

13 (ii) has not less than 1 year of experience making loans to
14 startup, newly established, or growing small business con-
15 cerns.

16 (B) INCLUSIONS.—The term “eligible intermediary” includes—

17 (i) a private, nonprofit community development corpora-
18 tion;

19 (ii) a consortium of private, nonprofit organizations or non-
20 profit community development corporations; and

21 (iii) an agency of or nonprofit entity established by a Na-
22 tive American Tribal Government.

23 (2) PROGRAM.—The term “program” means the small business
24 intermediary lending pilot program established under section 211102 of
25 this title.

26 **§ 211102. Establishment**

27 There is established a 3-year small business intermediary lending pilot
28 program under which the Administrator may make direct loans to eligible
29 intermediaries for the purpose of making loans to startup, newly estab-
30 lished, and growing small business concerns.

31 **§ 211103. Purposes**

32 The purposes of the program are—

33 (1) to assist small business concerns in areas suffering from a lack
34 of credit due to poor economic conditions or changes in the financial
35 market; and

1 (2) to establish a loan program under which the Administrator may
2 provide loans to eligible intermediaries to enable the eligible inter-
3 mediaries to provide loans to startup, newly established, and growing
4 small business concerns for working capital, real estate, or the acqui-
5 sition of materials, supplies, or equipment.

6 **§ 211104. Loans to eligible intermediaries**

7 (a) APPLICATION.—An eligible intermediary desiring a loan under the
8 program shall submit an application to the Administrator that describes—

- 9 (1) the type of small business concerns to be assisted;
10 (2) the size and range of loans to be made;
11 (3) the interest rate and terms of loans to be made;
12 (4) the geographic area to be served and the economic, poverty, and
13 unemployment characteristics of the area;
14 (5) the status of small business concerns in the area to be served
15 and an analysis of the availability of credit; and
16 (6) the qualifications of the applicant to carry out this chapter.

17 (b) LOAN LIMIT.—No loan may be made to an eligible intermediary
18 under the program if the total amount outstanding and committed to the
19 eligible intermediary by the Administrator would, as a result of the loan,
20 exceed \$1,000,000 during the participation of the eligible intermediary in
21 the program.

22 (c) LOAN TERM.—A loan made by the Administrator under the program
23 shall be for a term of 20 years.

24 (d) INTEREST RATE.—A loan made by the Administrator to an eligible
25 intermediary under the program shall bear an annual interest rate equal to
26 1.00 percent.

27 (e) NO FEE OR COLLATERAL.—The Administrator shall not charge any
28 fee or require collateral with respect to any loan made to an eligible inter-
29 mediary under the program.

30 (f) DELAYED PAYMENT.—The Administrator shall not require the pay-
31 ment of principal or interest on a loan made to an eligible intermediary
32 under the program during the 2-year period beginning on the date of the
33 initial disbursement of funds under the loan.

34 (g) MAXIMUM NUMBER OF PARTICIPANTS; MAXIMUM AMOUNTS.—During
35 each of fiscal years 2011, 2012, and 2013, the Administrator may make
36 loans under the program—

- 37 (1) to not more than 20 eligible intermediaries; and
38 (2) in a total amount of not more than \$20,000,000.

39 **§ 211105. Loans to small business concerns**

40 (a) IN GENERAL.—The Administrator, through an eligible intermediary,
41 shall make loans to startup, newly established, and growing small business

1 concerns for working capital, real estate, and the acquisition of materials,
2 supplies, furniture, fixtures, and equipment.

3 (b) MAXIMUM AMOUNT.—An eligible intermediary shall not make a loan
4 under the program of more than \$200,000 to any 1 small business concern.

5 (c) INTEREST RATE.—A loan made by an eligible intermediary to a small
6 business concern under the program—

7 (1) may have a fixed or a variable interest rate; and

8 (2) shall bear an interest rate specified by the eligible intermediary
9 in the application of the eligible intermediary for a loan under the pro-
10 gram.

11 (d) REVIEW RESTRICTIONS.—The Administrator shall not review individ-
12 ual loans made by an eligible intermediary to a small business concern be-
13 fore approval of the loan by the eligible intermediary.

14 **§ 211106. Regulations**

15 The Administrator shall issue regulations to carry out this chapter.

16 **§ 211107. Availability of funds**

17 Any amount provided to the Administrator for the purposes of carrying
18 out this chapter shall remain available until expended.

19 **§ 211108. Termination of authority**

20 The authority of the Administrator to make loans under the program
21 shall terminate on September 27, 2013.

22 **Division D—Microloan Program**
23 **Chapter 213—Microloan Program**

Sec.

213101. Definitions.

213102. Establishment of microloan program.

213103. Purposes of microloan program.

213104. Eligibility for participation.

213105. Loans to intermediaries; loans by intermediaries to small business concerns.

213106. Marketing, management, and technical assistance grants to intermediaries.

213107. Private sector borrowing technical assistance grants.

213108. Grants for management, marketing, technical assistance, and related services.

24 **§ 213101. Definitions**

25 In this chapter:

26 (1) INTERMEDIARY.—The term “intermediary” means—

27 (A) a private, nonprofit entity;

28 (B) a private, nonprofit community development corporation;

29 (C) a consortium of private, nonprofit organizations or nonprofit
30 community development corporations;

31 (D) a quasi-governmental economic development entity (such as
32 a planning and development district), other than a State, county,
33 or municipal government (or any agency of a State, county, or
34 municipal government), in a geographic area—

1 (i) in which no application is received from an eligible non-
2 profit organization; or

3 (ii) with respect to which the Administrator determines
4 that the needs of the geographic area are not adequately
5 served by an existing, eligible nonprofit organization that has
6 submitted an application; or

7 (E) an agency of or nonprofit entity established by a Native
8 American Tribal Government;

9 that seeks to borrow or has borrowed funds from the Administrator to
10 make microloans to small business concerns under the microloan pro-
11 gram.

12 (2) MICROLOAN.—The term “microloan” means a short-term, fixed
13 rate loan of not more than \$50,000, made by an intermediary to a
14 startup, newly established, or growing small business concern.

15 (3) RURAL AREA.—The term “rural area” means a political subdivi-
16 sion or unincorporated area—

17 (A) in a nonmetropolitan county (as defined by the Secretary
18 of Agriculture) or its equivalent; or

19 (B) in a metropolitan county or its equivalent that has a resi-
20 dent population of less than 20,000 if the Administrator deter-
21 mines the political subdivision or unincorporated area to be rural.

22 (4) STATE.—The term “State” includes the District of Columbia,
23 Puerto Rico, the United States Virgin Islands, Guam, and American
24 Samoa.

25 **§ 213102. Establishment of microloan program**

26 There is established within SBA a microloan program.

27 **§ 213103. Purposes of microloan program**

28 The purposes of the microloan program are—

29 (1) to assist women, low-income, veteran, and minority entrepreneurs
30 and business owners and other such individuals possessing the capabil-
31 ity to operate successful business concerns;

32 (2) to assist small business concerns in areas suffering from a lack
33 of credit due to economic downturns;

34 (3) to make loans to eligible intermediaries to enable the inter-
35 mediaries to provide small-scale loans, particularly loans in amounts
36 averaging not more than \$10,000, to startup, newly established, or
37 growing small business concerns for working capital or the acquisition
38 of materials, supplies, or equipment;

39 (4) to make grants to eligible intermediaries that, together with non-
40 Federal matching funds, will enable the intermediaries to provide inten-

1 sive marketing, management, and technical assistance to microloan bor-
2 rowers;

3 (5) to make grants to eligible nonprofit entities that, together with
4 non-Federal matching funds, will enable the entities to provide inten-
5 sive marketing, management, and technical assistance to assist low-in-
6 come entrepreneurs and other low-income individuals obtain private
7 sector financing for their businesses, with or without loan guarantees;

8 (6) to report to the Committee on Small Business and Entrepreneur-
9 ship of the Senate and the Committee on Small Business of the House
10 of Representatives on the effectiveness of the microloan program and
11 the advisability and feasibility of implementing such a program nation-
12 wide; and

13 (7) to establish a welfare-to-work microloan initiative to test the fea-
14 sibility of supplementing the technical assistance grants provided under
15 sections 213106 and 213107 of this title to individuals who are receiv-
16 ing assistance under the State program funded under part A of title
17 IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any
18 comparable State-funded means-tested program of assistance for low-
19 income individuals, to adequately assist those individuals in—

20 (A) establishing small business concerns; and

21 (B) eliminating their dependence on that assistance.

22 **§ 213104. Eligibility for participation**

23 An intermediary shall be eligible to receive loans and grants under sec-
24 tions 213105 and 213106 of this title if the intermediary has at least 1 year
25 of experience making microloans to startup, newly established, or growing
26 small business concerns and providing, as an integral part of the microloan
27 program, intensive marketing, management, and technical assistance to its
28 borrowers.

29 **§ 213105. Loans to intermediaries; loans by intermediaries**
30 **to small business concerns**

31 (a) IN GENERAL.—Under the microloan program, the Administrator may
32 make direct loans to eligible intermediaries for the purpose of making
33 microloans to small business concerns under this section.

34 (b) LOAN APPLICATIONS.—

35 (1) IN GENERAL.—As part of an application for a loan, an inter-
36 mediary shall submit to the Administrator a description of—

37 (A) the type of businesses to be assisted;

38 (B) the size and range of loans to be made;

39 (C) the geographic area to be served, including a description of
40 the economic, poverty, and unemployment characteristics of the
41 area;

1 (D) the status of small business concerns in the area to be
2 served, including an analysis of their credit and technical assist-
3 ance needs;

4 (E) any marketing, management, and technical assistance to be
5 provided in connection with a loan made under this chapter;

6 (F) the local economic credit markets, including the costs asso-
7 ciated with obtaining credit locally;

8 (G) the qualifications of the applicant to carry out the purposes
9 of the microloan program; and

10 (H) any plan to involve other technical assistance providers
11 (such as counselors from SCORE or small business development
12 centers) or private sector lenders in assisting selected business
13 concerns.

14 (2) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to
15 participate in the microloan program, the Administrator shall give pri-
16 ority to applicants that provide loans in amounts averaging not more
17 than \$10,000.

18 (c) INTERMEDIARY CONTRIBUTION.—As a condition of a loan under sub-
19 section (a), the Administrator shall require an intermediary to contribute
20 not less than 15 percent of the loan amount in cash from a non-Federal
21 source.

22 (d) LOAN LIMITS.—A loan shall not be made under the microloan pro-
23 gram if the total amount outstanding and committed (on a deferred basis,
24 through a participation on an immediate basis, or directly) to 1 inter-
25 mediary (excluding outstanding grants) under the general business loan pro-
26 gram and microloan program would, as a result of the loan, exceed
27 \$750,000 in the 1st year of the intermediary's participation in the micro-
28 loan program or \$5,000,000 in any subsequent year of the intermediary's
29 participation in the microloan program.

30 (e) LOAN TERM.—A loan made by the Administrator under this chapter
31 shall be for a term of 10 years.

32 (f) DELAYED PAYMENTS.—Except for a loan loss reserve fund under sub-
33 section (i), the Administrator shall not require repayment of principal or in-
34 terest on a loan made to an intermediary under this chapter during the 1st
35 year of the loan.

36 (g) NO FEE OR COLLATERAL.—Except for a loan loss reserve fund under
37 subsection (i), the Administrator shall not charge any fee or require collat-
38 eral other than an assignment of the notes receivable of the microloans with
39 respect to any loan made to an intermediary under the microloan program.

40 (h) INTEREST RATES.—

1 (1) IN GENERAL.—Except as provided in paragraph (2), a loan made
2 by the Administrator to an intermediary under this chapter shall bear
3 an interest rate equal to 1.25 percentage points below the rate deter-
4 mined by the Secretary of the Treasury for obligations of the United
5 States with a period of maturity of 5 years, adjusted to the nearest
6 0.125 percent.

7 (2) RATES APPLICABLE TO CERTAIN SMALL LOANS.—A loan made
8 by the Administrator to an intermediary that makes loans to small
9 business concerns and entrepreneurs averaging not more than \$7,500
10 shall bear an interest rate that is 2 percentage points below the rate
11 determined by the Secretary of the Treasury for obligations of the
12 United States with a period of maturity of 5 years, adjusted to the
13 nearest 0.125 percent.

14 (3) MULTIPLE SITES OR OFFICES.—The interest rate determined
15 under paragraph (1) or (2) shall apply to each separate loanmaking
16 site or office of an intermediary only if the site or office meets the re-
17 quirements of that paragraph.

18 (4) RATE BASIS.—The applicable rate of interest under this sub-
19 section—

20 (A) for the 1st year of an intermediary's participation in the
21 microloan program, shall be applied retroactively based on the ac-
22 tual lending practices of the intermediary as determined by the
23 Administrator before the end of that year; and

24 (B) for each subsequent year of an intermediary's participation
25 in the microloan program, shall be based on the actual lending
26 practices of the intermediary during the term of the intermediary's
27 participation in the microloan program.

28 (i) LOSS RESERVE OF INTERMEDIARIES.—

29 (1) IN GENERAL.—The Administrator shall by regulation require an
30 intermediary to establish and maintain a loan loss reserve fund until
31 all obligations owed to the Administrator under the microloan program
32 are repaid.

33 (2) LEVEL OF LOAN LOSS RESERVE FUND.—

34 (A) IN GENERAL.—Subject to subparagraph (C), the Adminis-
35 trator shall require the loan loss reserve fund of an intermediary
36 to be maintained at a level equal to 15 percent of the outstanding
37 balance of the notes receivable owed to the intermediary.

38 (B) REVIEW OF LOAN LOSS RESERVE.—

39 (i) IN GENERAL.—After the initial 5 years of an
40 intermediary's participation in the microloan program, the

1 Administrator shall, at the request of the intermediary, con-
2 duct a review of the annual loss rate of the intermediary.

3 (ii) REVIEW PERIOD.—An intermediary that requests a re-
4 duction in its loan loss reserve shall be reviewed based on the
5 most recent 5-year period preceding the request.

6 (C) REDUCTION OF LOAN LOSS RESERVE.—Subject to subpara-
7 graph (D), the Administrator may reduce the annual loan loss re-
8 serve requirement of an intermediary to reflect the actual average
9 loan loss rate for the intermediary during the preceding 5-year pe-
10 riod, except that in no case shall the loan loss reserve be reduced
11 to less than 10 percent of the outstanding balance of the notes
12 receivable owed to the intermediary.

13 (D) REQUIREMENTS.—The Administrator may reduce the an-
14 nual loan loss reserve requirement of an intermediary only if the
15 intermediary demonstrates to the satisfaction of the Administrator
16 that—

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

19 (ii) no other factors exist that may impair the ability of the
20 intermediary to repay all obligations owed to the Adminis-
21 trator under this chapter.

22 (j) LOANS BY INTERMEDIARIES TO SMALL BUSINESS CONCERNS.—

23 (1) IN GENERAL.—From funds made available to an intermediary
24 under the microloan program, the intermediary shall make short-term,
25 fixed rate loans to startup, newly established, and growing small busi-
26 ness concerns for working capital and the acquisition of materials, sup-
27 plies, furniture, fixtures, and equipment.

28 (2) LOAN AMOUNT.—

29 (A) PORTFOLIO REQUIREMENT.—To the extent practicable, an
30 intermediary that operates under the microloan program shall
31 maintain a microloan portfolio with an average loan size of not
32 more than \$15,000.

33 (B) UNAVAILABILITY OF COMPARABLE CREDIT.—An inter-
34 mediary may make a loan under the microloan program of more
35 than \$20,000 to a small business concern only if the small busi-
36 ness concern demonstrates that—

37 (i) it is unable to obtain credit elsewhere at comparable in-
38 terest rates; and

39 (ii) it has good prospects for success.

40 (C) MAXIMUM AMOUNT.—An intermediary shall not—

150

1 (i) make a loan under this chapter of more than \$50,000;
2 or

3 (ii) have outstanding or committed to any 1 borrower more
4 than \$50,000.

5 (3) INTEREST LIMIT.—Notwithstanding any provision of law of any
6 State (including the constitution of a State) pertaining to the rate or
7 amount of interest that may be charged, taken, received, or reserved
8 on a loan, the maximum rate of interest to be charged on a microloan
9 funded under this chapter shall not exceed the rate of interest applica-
10 ble to a loan made to an intermediary by the Administrator—

11 (A) in the case of a loan of more than \$7,500 made by the
12 intermediary to a small business concern or entrepreneur, by more
13 than 7.75 percentage points; and

14 (B) in the case of a loan of not more than \$7,500 made by the
15 intermediary to a small business concern or entrepreneur by more
16 than 8.5 percentage points.

17 (4) REVIEW RESTRICTION.—The Administrator shall not review indi-
18 vidual microloans made by intermediaries prior to approval.

19 (5) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSI-
20 NESSES.—In addition to other eligible small business concerns, a bor-
21 rower under the microloan program may include an individual who will
22 use the loan proceeds to establish—

23 (A) a for-profit or nonprofit child care establishment; or

24 (B) a business providing a for-profit transportation service.

25 (k) PROGRAM FUNDING FOR MICROLOANS.—

26 (1) NUMBER OF PARTICIPANTS.—Under the microloan program, the
27 Administrator may fund, on a competitive basis, not more than 300
28 intermediaries.

29 (2) ALLOCATION.—

30 (A) MINIMUM ALLOCATION.—Subject to the availability of ap-
31 propriations, of the total amount of new loan funds made available
32 for award under the microloan program for each fiscal year, the
33 Administrator shall make available for award in each State an
34 amount equal to the sum of—

35 (i) the lesser of—

36 (I) \$800,000; or

37 (II) $\frac{1}{55}$ of the total amount of new loan funds made
38 available for award under the microloan program for
39 that fiscal year; and

40 (ii) any additional amount, as determined by the Adminis-
41 trator.

1 (B) REDISTRIBUTION.—If, at the beginning of the 3d quarter
2 of a fiscal year, the Administrator determines that any portion of
3 the amount made available to carry out the microloan program is
4 unlikely to be made available under subparagraph (A) during that
5 fiscal year, the Administrator may make that portion available for
6 award in any 1 or more States without regard to subparagraph
7 (A).

8 (l) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving
9 microloan program applicants and providing funding to intermediaries
10 under the microloan program, the Administrator shall select and provide
11 funding to such intermediaries as will ensure appropriate availability of
12 loans for small business concerns in all industries located throughout each
13 State, particularly industries located in urban areas and industries located
14 in rural areas.

15 **§ 213106. Marketing, management, and technical assistance**
16 **grants to intermediaries**

17 (a) IN GENERAL.—In conjunction with a loan to an intermediary under
18 section 213105 of this title, the Administrator may make a grant to the eli-
19 gible intermediary for the purpose of providing intensive marketing, man-
20 agement, and technical assistance to small business concerns that are bor-
21 rowers under the microloan program.

22 (b) GRANT AMOUNT.—

23 (1) IN GENERAL.—An intermediary that receives a loan under sec-
24 tion 213105 of this title shall be eligible to receive a grant in an
25 amount equal to not more than 25 percent of the total outstanding bal-
26 ance of loans made to the intermediary under the microloan program.

27 (2) INTERMEDIARY CONTRIBUTION.—

28 (A) IN GENERAL.—As a condition of a grant under paragraph
29 (1), the Administrator shall require the intermediary to contribute
30 an amount equal to 25 percent of the amount of the grant, ob-
31 tained solely from a non-Federal source.

32 (B) FORM.—In addition to cash or other direct funding, a con-
33 tribution under subparagraph (A) may include indirect costs or in-
34 kind contributions paid for under a non-Federal program.

35 (c) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN
36 LOANS.—

37 (1) IN GENERAL.—An intermediary that has a portfolio of loans
38 under the microloan program that averages not more than \$10,000
39 during the period of the intermediary's participation in the microloan
40 program shall be eligible to receive a grant equal to 5 percent of the
41 total outstanding balance of loans made to the intermediary under the

1 microloan program, in addition to any grant made under subsection
2 (b).

3 (2) USE.—A grant under paragraph (1) shall be used to provide
4 marketing, management, and technical assistance to small business
5 concerns that are borrowers under the microloan program.

6 (d) MULTIPLE SITES OR OFFICES.—Eligibility for a grant under sub-
7 section (b) or (c) shall be determined separately for each loanmaking site
8 or office of an intermediary.

9 (e) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

10 (1) IN GENERAL.—An intermediary may expend an amount not to
11 exceed 25 percent of the funds received under subsection (a) to provide
12 information and technical assistance to small business concerns that
13 are prospective borrowers under section 213108 of this title.

14 (2) TECHNICAL ASSISTANCE.—An intermediary may provide tech-
15 nical assistance under paragraph (1) through a 3d party contract.

16 **§ 213107. Private sector borrowing technical assistance**
17 **grants**

18 (a) IN GENERAL.—The Administrator may make grants to nonprofit enti-
19 ties for the purpose of providing marketing, management, and technical as-
20 sistance to low-income individuals seeking to start or enlarge their own busi-
21 nesses, if the assistance includes working with the grant recipient to secure
22 loans in amounts not to exceed \$50,000 from private sector lending institu-
23 tions, with or without a loan guarantee from the nonprofit entity.

24 (b) GRANT AMOUNTS.—The Administrator may make not more than 55
25 grants annually under subsection (a), each in an amount not to exceed
26 \$200,000.

27 (c) GRANT RECIPIENT CONTRIBUTION.—

28 (1) IN GENERAL.—As a condition of a grant under subsection (a),
29 the Administrator shall require the grant recipient to contribute an
30 amount equal to 20 percent of the amount of the grant, obtained solely
31 from a non-Federal source.

32 (2) FORM.—In addition to cash or other direct funding, a contribu-
33 tion under paragraph (1) may include indirect costs or in-kind con-
34 tributions paid for under a non-Federal program.

35 **§ 213108. Grants for management, marketing, technical as-**
36 **sistance, and related services**

37 (a) IN GENERAL.—The Administrator may procure technical assistance
38 for intermediaries participating in the microloan program to ensure that the
39 intermediaries have the knowledge, skills, and understanding of micro-
40 lending practices necessary to operate a successful microloan program.

1 (b) ASSISTANCE AMOUNT.—The Administrator shall transfer 7 percent of
2 the annual appropriation for loans and loan guarantees under this chapter
3 to SBA’s Salaries and Expense Account for the specific purpose of provid-
4 ing 1 or more technical assistance grants to experienced microlending orga-
5 nizations and national and regional nonprofit organizations that have dem-
6 onstrated experience in providing training support for microenterprise devel-
7 opment and financing to achieve the purpose specified in subsection (a).

8 (c) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made
9 available to carry out the welfare-to-work microloan initiative under section
10 213103(7) of this title for any fiscal year, the Administrator may use not
11 more than 5 percent to provide technical assistance, either directly or
12 through contractors, to welfare-to-work microloan initiative grantees, to en-
13 sure that the grantees have the knowledge, skills, and understanding of
14 microlending and welfare-to-work transition, and other related issues, to op-
15 erate a successful welfare-to-work microloan initiative.

16 **Division E—Disaster Assistance Programs**

17 **Chapter 221—Disaster Loan Program**

Sec.

- 221101. Physical loss disaster loans.
- 221102. Economic injury disaster loans.
- 221103. Loans to assist small business concerns that suffer injury as a result of an essential employee’s being ordered to active military duty.
- 221104. Public awareness of disaster declaration and application periods.
- 221105. Disaster loan processing.
- 221106. Disaster assistance employees.
- 221107. Maximum loan amount.
- 221108. Additional disaster assistance in cases of extraordinary disaster.
- 221109. Interest rates.
- 221110. Maximum term.
- 221111. Deferment of repayment.
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- 221114. Assistance and counseling for disaster victims.
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- 221120. Disaster response plan.
- 221121. Coordination of disaster assistance programs with FEMA.
- 221122. Plans to secure sufficient office space.
- 221123. Bond guarantees in procurements relating to a major disaster.
- 221124. Civil penalty.

18 **§ 221101. Physical loss disaster loans**

19 (a) IN GENERAL.—Except as to agricultural enterprises, to the extent
20 and in such amounts as are provided in advance in appropriation Acts, the
21 Administrator may make such a loan (directly or in cooperation with a bank
22 or other lending institution through an agreement to participate on an im-
23 mediate or deferred (guaranteed) basis) as the Administrator determines to
24 be necessary or appropriate to repair, rehabilitate, or replace property, real

1 or personal, damaged or destroyed by or as a result of a natural or other
2 disaster.

3 (b) LOAN AMOUNT.—

4 (1) IN GENERAL.—The amount of a loan under subsection (a) shall
5 be equal to 100 percent of the amount of the loss, minus any amount
6 compensated for by insurance or otherwise.

7 (2) PROTECTION FROM FUTURE DISASTERS.—The Administrator
8 may increase the amount of a loan under subsection (a) by up to 20
9 percent of the aggregate costs of the damage or destruction (whether
10 or not compensated for by insurance or otherwise) if the Administrator
11 determines the increase to be necessary or appropriate to protect the
12 damaged or destroyed property from future disasters by taking mitigat-
13 ing measures, including construction of retaining walls and sea walls,
14 grading and contouring land, relocating utilities, and modifying struc-
15 tures.

16 (3) LIMITATION ON LOAN AMOUNT.—

17 (A) IN GENERAL.—No loan under this section shall be made if
18 the total amount outstanding and committed to the borrower
19 under the disaster loan program would exceed \$1,500,000 for any
20 1 disaster unless an applicant constitutes a major source of em-
21 ployment in an area suffering a disaster, in which case the Admin-
22 istrator may waive the \$1,500,000 limitation.

23 (B) MAJOR SOURCE OF EMPLOYMENT.—For purposes of deter-
24 mining whether a nonprofit applicant that owns a premises con-
25 stitutes a major source of employment under subparagraph (A),
26 the employees of 2 or more concerns that share the premises as
27 a common business premises shall be aggregated.

28 (4) LIMITATION ON REDUCTION OF LOAN AMOUNT.—

29 (A) IN GENERAL.—The Administrator shall not reduce the
30 amount of a loan—

31 (i) for any homeowner on account of loss of real estate to
32 less than \$100,000 for any 1 disaster; or

33 (ii) for any homeowner or lessee on account of loss of per-
34 sonal property to less than \$20,000 for any 1 disaster.

35 (B) REFINANCING.—The \$100,000 and \$20,000 amounts in
36 subparagraph (A) are in addition to any refinancing for which a
37 loan applicant is eligible.

38 (c) REFINANCINGS.—

39 (1) IN GENERAL.—A loan or guarantee may be made to refinance
40 a mortgage or other lien against a totally destroyed or substantially

1 damaged home or business concern (other than an agricultural enter-
2 prise).

3 (2) REQUIREMENTS.—A loan or guarantee under paragraph (1) shall
4 not be made unless the Administrator determines that—

5 (A) the applicant is not able to obtain credit elsewhere; and

6 (B) the property is to be repaired, rehabilitated, or replaced.

7 (3) AMOUNT.—The amount refinanced under paragraph (1)—

8 (A) shall not exceed the amount of physical loss sustained; and

9 (B) shall be reduced to the extent that the mortgage or lien is
10 satisfied by insurance or otherwise.

11 (d) COLLATERAL.—The Administrator shall not require collateral for a
12 loan of \$14,000 (or such greater amount as the Administrator determines
13 to be appropriate in the event of a major disaster) or less that is made
14 under this section.

15 **§ 221102. Economic injury disaster loans**

16 (a) DEFINITIONS.—In this section:

17 (1) DISASTER.—The term “disaster” includes—

18 (A) a drought;

19 (B) a below average water level in 1 or more of the Great Lakes
20 or on any other body of water in the United States that supports
21 commerce by small business concerns; and

22 (C) an ice storm or blizzard.

23 (2) DISASTER AREA.—The term “disaster area” includes—

24 (A) a county determined to be a disaster by the President, the
25 Secretary of Agriculture, or the Administrator; and

26 (B) a county contiguous to a county described in subparagraph
27 (A).

28 (b) LOANS.—Except as to agricultural enterprises other than businesses
29 engaged in aquaculture, to the extent and in such amounts as are provided
30 in advance in appropriation Acts, the Administrator may make such a loan
31 (directly or in cooperation with a bank or other lending institution through
32 an agreement to participate on an immediate or deferred (guaranteed)
33 basis) as the Administrator determines to be necessary or appropriate to a
34 farm-related or nonfarm-related small business concern, private nonprofit
35 organization, or small agricultural cooperative located in a disaster area if—

36 (1) the Administrator determines that the small business concern,
37 private nonprofit organization, or agricultural cooperative has suffered
38 a substantial economic injury as a result of the disaster;

39 (2)(A) the disaster constitutes—

40 (i) a major disaster;

1 (ii) a natural disaster, as determined by the Secretary of Agri-
2 culture under section 321 of the Consolidated Farm and Rural
3 Development Act (7 U.S.C. 1961), in which case, assistance under
4 this section may be provided to farm-related and nonfarm-related
5 small business concerns, subject to the other applicable require-
6 ments of this section; or

7 (iii) a disaster, as determined by the Administrator; or

8 (B) if no disaster described in subparagraph (A) is declared, the
9 Governor of a State in which a disaster has occurred certifies to the
10 Administrator that small business concerns, private nonprofits organi-
11 zations, or small agricultural cooperatives—

12 (i) have suffered economic injury as a result of the disaster; and

13 (ii) are in need of financial assistance that is not available on
14 reasonable terms in the disaster area; and

15 (3) the Administrator determines that the applicant is not able to
16 obtain credit elsewhere.

17 (c) PROMPT RESPONSE TO CERTIFICATION.—Not later than 30 days
18 after the date of receipt of a certification by a Governor of a State under
19 subsection (b)(2)(B), the Administrator shall respond in writing to the Gov-
20 ernor on the Administrator's determination regarding the certification, stat-
21 ing the reasons for the determination.

22 (d) LIMITATION ON LOAN AMOUNT.—

23 (1) IN GENERAL.—No loan under this section shall be made if the
24 total amount outstanding and committed to a borrower under the dis-
25 aster loan program would exceed \$1,500,000 for any 1 disaster unless
26 the borrower constitutes a major source of employment in a disaster
27 area, in which case the Administrator may waive the \$1,500,000 limi-
28 tation.

29 (2) MAJOR SOURCE OF EMPLOYMENT.—For purposes of determining
30 whether a nonprofit applicant that owns a premises constitutes a major
31 source of employment under paragraph (1), the employees of 2 or more
32 concerns that share the premises as a common business premises shall
33 be aggregated.

34 (e) NURSERIES.—The Administrator shall not withhold disaster assist-
35 ance under this section to a nursery that is a victim of a drought disaster.

36 **§ 221103. Loans to assist small business concerns that suffer**
37 **injury as a result of an essential employee's being**
38 **ordered to active military duty**

39 (a) DEFINITIONS.—In this section:

40 (1) ESSENTIAL EMPLOYEE.—The term “essential employee” means
41 an individual who is employed by a small business concern and whose

1 managerial or technical expertise is critical to the successful day-to-day
2 operations of the small business concern.

3 (2) PERIOD OF MILITARY CONFLICT.—The term “period of military
4 conflict” has the meaning given the term in section 201104(a) of this
5 title.

6 (3) RESERVIST EXPECTING ACTIVATION.—The term “reservist ex-
7 pecting activation” means a reservist who—

8 (A) has not been ordered to active duty;

9 (B) expects to be ordered to active duty during a period of mili-
10 tary conflict; and

11 (C) is a key employee of a small business concern that can rea-
12 sonably demonstrate that the small business concern will suffer
13 economic injury in the absence of the reservist.

14 (4) SUBSTANTIAL ECONOMIC INJURY.—The term “substantial eco-
15 nomic injury” means an economic harm to a small business concern
16 that results in the inability of the small business concern to—

17 (A) meet its obligations as they mature;

18 (B) pay its ordinary and necessary operating expenses; or

19 (C) market, produce, or provide a product or service ordinarily
20 marketed, produced, or provided by the small business concern.

21 (b) IN GENERAL.—Except as to agricultural enterprises, to the extent
22 and in such amounts as are provided in advance in appropriation Acts, the
23 Administrator may make a loan (directly or in cooperation with a bank or
24 other lending institution through an agreement to participate on an imme-
25 diate or deferred basis) to assist a small business concern that has suffered
26 or that is likely to suffer substantial economic injury as the result of an
27 essential employee of the small business concern’s being ordered to active
28 military duty during a period of military conflict.

29 (c) ELIGIBILITY PERIOD.—

30 (1) IN GENERAL.—A small business concern shall be eligible for as-
31 sistance under this section during the period beginning on the date on
32 which an essential employee is ordered to active duty and ending on
33 the date that is 1 year after the date on which the essential employee
34 is discharged or released from active duty.

35 (2) EXTENSION.—The Administrator may, when appropriate (as de-
36 termined by the Administrator), extend the ending date specified in
37 paragraph (1) by not more than 1 year.

38 (d) INTEREST RATE.—A loan or guarantee made under this section shall
39 be made at the same interest rate as in the case of an economic injury dis-
40 aster loan under section 221102 of this title.

41 (e) LOAN AMOUNT.—

1 (1) IN GENERAL.—Except as provided in paragraph (2), no loan may
2 be made under this section if the total amount outstanding and com-
3 mitted to the borrower under the disaster loan program would exceed
4 \$1,500,000.

5 (2) MAJOR SOURCE OF EMPLOYMENT.—If the Administrator deter-
6 mines that the applicant constitutes a major source of employment in
7 its surrounding area (including a borrower that was not a major source
8 of employment before the disaster but became a major source of em-
9 ployment after the disaster), as determined by the Administrator, the
10 Administrator may waive the \$1,500,000 limitation under paragraph
11 (1).

12 (f) PRECONSIDERATION PROCESS.—The Administrator shall establish a
13 preconsideration process under which the Administrator—

14 (1) may collect all relevant materials necessary for processing a loan
15 to a small business concern under this section before a reservist expect-
16 ing activation who is employed by the small business concern is acti-
17 vated; and

18 (2) shall distribute funds for any loan approved under paragraph (1)
19 if the reservist expecting activation is activated.

20 (g) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

21 (1) IN GENERAL.—The Administrator, in consultation with the Sec-
22 retary of Veterans Affairs and the Secretary of Defense, may develop
23 a comprehensive outreach and technical assistance program (referred to
24 in this subsection as the “program”) to—

25 (A) market the loans available under this section to reservists
26 and family members of reservists (including both reservists that
27 are on active duty and reservists that are not on active duty); and

28 (B) provide technical assistance to a small business concern ap-
29 plying for a loan under this section.

30 (2) COMPONENTS.—The program shall—

31 (A) incorporate appropriate websites maintained by SBA, the
32 Department of Veterans Affairs, and the Department of Defense;
33 and

34 (B) require that information on the program be made available
35 to small business concerns directly through—

36 (i) the district offices and resource partners of SBA, in-
37 cluding small business development centers, women’s business
38 centers, and the SCORE; and

39 (ii) the Department of Veterans Affairs, the Department of
40 Defense, and other Federal agencies.

41 (h) NONCOLLATERALIZED LOANS.—

1 (1) IN GENERAL.—Notwithstanding any other provision of law, the
2 Administrator may make a loan under this section of not more than
3 \$50,000 without collateral.

4 (2) DEFERRAL OF PAYMENT.—The Administrator may defer pay-
5 ment of principal and interest on a loan described in paragraph (1)
6 during the longer of—

7 (A) the 1-year period beginning on the date of the initial dis-
8 bursement of the loan; or

9 (B) the period during which the essential employee is on active
10 duty.

11 (i) PRIORITY.—The Administrator shall—

12 (1) give priority to any application for a loan under this section; and

13 (2) process and make a determination regarding applications under
14 this section prior to processing or making a determination on other
15 loan applications under the disaster loan program, on a rolling basis.

16 **§ 221104. Public awareness of disaster declaration and ap-
17 plication periods**

18 (a) COORDINATION WITH FEMA.—

19 (1) IN GENERAL.—Notwithstanding any other provision of law, for
20 any disaster declared under this chapter or major disaster (including
21 any major disaster relating to which the Administrator declares eligi-
22 bility for additional disaster assistance under section 221108 of this
23 title), the Administrator, in consultation with the Administrator of the
24 Federal Emergency Management Agency, shall ensure, to the maxi-
25 mum extent practicable, that all application periods for disaster relief
26 under this subtitle correspond with application deadlines established
27 under the Robert T. Stafford Disaster Relief and Emergency Assist-
28 ance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

29 (2) DEADLINES.—Notwithstanding any other provision of law, not
30 later than 10 days before the closing date of an application period for
31 a major disaster (including any major disaster relating to which the
32 Administrator declares eligibility for additional disaster assistance
33 under section 221108 of this title), the Administrator, in consultation
34 with the Administrator of the Federal Emergency Management Agency,
35 shall submit to the Committee on Small Business and Entrepreneur-
36 ship of the Senate and the Committee on Small Business of the House
37 of Representatives a report that includes—

38 (A) the deadline for submitting applications for assistance under
39 this subtitle relating to the major disaster;

40 (B) information regarding the number of loan applications and
41 disbursements processed by the Administrator relating to the

1 major disaster for each day during the period beginning on the
2 date on which the major disaster was declared and ending on the
3 date of the report; and

4 (C) an estimate of the number of potential applicants that have
5 not submitted an application relating to the major disaster.

6 (b) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under
7 this chapter or the Administrator declares eligibility for additional disaster
8 assistance under section 221108 of this title, the Administrator shall make
9 every effort to communicate through radio, television, print, and web-based
10 outlets all relevant information needed by disaster loan applicants, includ-
11 ing—

12 (1) the date of the declaration;

13 (2) the names of cities and towns within the disaster area;

14 (3) loan application deadlines related to the disaster;

15 (4) all relevant contact information for victim services available
16 through the Administrator (including links to small business develop-
17 ment center websites);

18 (5) links to relevant Federal and State disaster assistance websites,
19 including links to websites providing information regarding assistance
20 available from the Federal Emergency Management Agency;

21 (6) information on eligibility criteria for the disaster assistance pro-
22 grams, including where loan applications can be found; and

23 (7) loan application materials that clearly state the function of SBA
24 as the Federal source of disaster loans for homeowners and renters.

25 (c) MARKETING AND OUTREACH.—The Administrator shall create a mar-
26 keting and outreach plan that—

27 (1) encourages a proactive approach to the disaster relief efforts of
28 the Administrator;

29 (2) makes clear the services provided by the Administrator, including
30 contact information, application information, and timelines for submit-
31 ting applications, the review of applications, and the disbursement of
32 funds;

33 (3) describes each of the disaster assistance programs, including how
34 each disaster assistance program is made available and the eligibility
35 requirements for each disaster assistance program;

36 (4) provides for regional marketing, focusing on disasters occurring
37 in each SBA region before June 18, 2008, and likely scenarios for dis-
38 asters in each SBA region; and

39 (5) ensures that the marketing plan is made available at small busi-
40 ness development centers and on the SBA website.

1 **§ 221105. Disaster loan processing**

2 (a) MAJOR DISASTER LOAN PROCESSING AND LOSS VERIFICATION BY
3 QUALIFIED PRIVATE CONTRACTORS.—

4 (1) MAJOR DISASTER LOAN PROCESSING.—The Administrator may
5 enter into an agreement with a qualified private contractor, as deter-
6 mined by the Administrator, to process loans under this chapter in the
7 event of a major disaster (including any major disaster relating to
8 which the Administrator declares eligibility for additional disaster as-
9 sistance under section 221108 of this title), under which the Adminis-
10 trator shall pay the contractor a fee for each loan processed.

11 (2) LOAN LOSS VERIFICATION.—The Administrator may enter into
12 an agreement with a qualified lender or loss verification professional,
13 as determined by the Administrator, to verify losses for loans under
14 this chapter in the event of a major disaster (including any major dis-
15 aster relating to which the Administrator declares eligibility for addi-
16 tional disaster assistance under section 221108 of this title), under
17 which the Administrator shall pay the lender or verification professional
18 a fee for each loan for which the lender or verification professional veri-
19 fies a loss.

20 (b) COORDINATION OF EFFORTS BETWEEN THE ADMINISTRATOR AND
21 THE COMMISSIONER OF INTERNAL REVENUE TO EXPEDITE LOAN PROC-
22 ESSING.—The Administrator and the Commissioner of Internal Revenue
23 shall, to the maximum extent practicable, ensure that all relevant and allow-
24 able tax records for loan approval are shared with loan processors in an ex-
25 pedited manner on request by the Administrator.

26 (c) INFORMATION TRACKING AND FOLLOWUP SYSTEM.—

27 (1) INFORMATION TRACKING.—

28 (A) IN GENERAL.—The Administrator shall develop, implement,
29 and maintain a centralized information system to track commu-
30 nications between SBA personnel and applicants for disaster as-
31 sistance.

32 (B) INFORMATION TO BE RECORDED.—The information system
33 shall ensure that when an applicant for disaster assistance com-
34 municates with SBA personnel on a matter relating to the applica-
35 tion, the following information is recorded:

36 (i) The method of communication.

37 (ii) The date of the communication.

38 (iii) The identity of the SBA personnel.

39 (iv) A summary of the subject matter of the communica-
40 tion.

1 (2) FOLLOWUP.—The Administrator shall ensure that an applicant
2 for disaster assistance receives, by telephone, mail, or electronic mail,
3 followup communications from SBA personnel at all critical stages of
4 the application process, including the following:

5 (A) When SBA personnel determine that additional information
6 or documentation is required to process the application.

7 (B) When SBA personnel determine whether to approve or deny
8 the disaster assistance.

9 (C) When the primary contact person managing the application
10 for disaster assistance has changed.

11 (d) DISASTER ASSISTANCE PROCESSING REDUNDANCY.—The Adminis-
12 trator shall ensure that SBA has in place a facility for disaster assistance
13 processing that, when SBA's primary facility for disaster loan processing
14 becomes unavailable, is able to take over all disaster loan processing from
15 the primary facility within 2 days.

16 **§ 221106. Disaster assistance employees**

17 (a) IN GENERAL.—In carrying out the disaster assistance programs, the
18 Administrator may, where practicable, ensure that the number of full-time
19 equivalent employees—

20 (1) in the Office of the Disaster Assistance is not fewer than 800;

21 and

22 (2) in the Disaster Cadre of SBA is not fewer than 1,000.

23 (b) REPORT.—In carrying out the disaster assistance programs, if the
24 number of full-time employees for the Office of Disaster Assistance or the
25 Disaster Cadre of SBA is below the level required by subsection (a) for that
26 office, not later than 21 days after the date on which the staffing level de-
27 creases below the level required by subsection (a), the Administrator shall
28 submit to the Committee on Appropriations and Committee on Small Busi-
29 ness and Entrepreneurship of the Senate and the Committee on Appropria-
30 tions and Committee on Small Business of the House of Representatives a
31 report that—

32 (1) details staffing levels on that date;

33 (2) requests, if practicable and determined to be appropriate by the
34 Administrator, additional funds for additional employees; and

35 (3) contains such additional information as the Administrator deter-
36 mines to be appropriate.

37 **§ 221107. Maximum loan amount**

38 (a) AGGREGATE LOAN AMOUNTS.—Except as provided in subsection (b),
39 and notwithstanding any other provision of law, the aggregate loan amount
40 outstanding and committed to a borrower under the disaster loan program
41 shall not exceed \$2,000,000.

1 (b) WAIVER.—The Administrator may increase the aggregate loan
2 amount under subsection (a) for loans relating to a disaster to a level estab-
3 lished by the Administrator based on appropriate economic indicators for
4 the region in which the disaster occurred.

5 **§ 221108. Additional disaster assistance in cases of extraor-**
6 **dinary disaster**

7 (a) DEFINITION OF ELIGIBLE SMALL BUSINESS CONCERN.—In this sec-
8 tion, the term “eligible small business concern” means a small business con-
9 cern—

10 (1) that has suffered extraordinary disaster-related substantial eco-
11 nomic injury as a result of an extraordinary disaster; and

12 (2)(A) for which not less than 25 percent of the market share of the
13 small business concern is from business transacted in the extraordinary
14 disaster area;

15 (B) for which not less than 25 percent of an input into a production
16 process of the small business concern is from the extraordinary disaster
17 area; or

18 (C) that relies on a provider located in the extraordinary disaster
19 area for a service that is not readily available elsewhere.

20 (b) DECLARATION OF EXTRAORDINARY DISASTER.—If the President de-
21 clares a major disaster, the Administrator may declare that the major disas-
22 ter constitutes an extraordinary disaster if the major disaster—

23 (1) results in—

24 (A) extraordinary levels of casualties or damage; or

25 (B) disruption severely affecting the population (including a
26 mass evacuation), the infrastructure, the environment, the econ-
27 omy, national morale, or government functions in an area;

28 (2) is comparable to a catastrophic incident described in the Admin-
29 istrator’s national response plan (including any successor to the na-
30 tional response plan), unless the national response plan expires and
31 there is no successor to the plan, in which case this paragraph shall
32 be of no effect; and

33 (3) is of such size and scope that—

34 (A) the disaster loan program is incapable of providing adequate
35 and timely assistance to individuals or business concerns located
36 within the major disaster area; or

37 (B) a significant number of business concerns outside the major
38 disaster area have suffered major disaster-related substantial eco-
39 nomic injury as a result of the major disaster.

40 (c) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

1 (1) IN GENERAL.—If the Administrator declares an extraordinary
2 disaster, the Administrator may make such loans (directly or in co-
3 operation with a bank or other institution through an agreement to
4 participate on an immediate or deferred basis) as the Administrator de-
5 termines to be appropriate to eligible small business concerns located
6 anywhere in the United States.

7 (2) PROCESSING TIME.—

8 (A) IN GENERAL.—If the Administrator determines that the av-
9 erage processing time for applications for disaster loans under this
10 subsection relating to a specific major disaster is more than 15
11 days, the Administrator shall give priority to the processing of
12 such applications submitted by eligible small business concerns lo-
13 cated inside the major disaster area until the Administrator deter-
14 mines that the average processing time for such applications is not
15 more than 15 days.

16 (B) SUSPENSION OF APPLICATIONS FROM OUTSIDE MAJOR DIS-
17 ASTER AREA.—If the Administrator determines that the average
18 processing time for applications for disaster loans under this sub-
19 subsection relating to a specific major disaster is more than 30 days,
20 the Administrator shall suspend the processing of such applica-
21 tions submitted by eligible small business concerns located outside
22 the major disaster area until the Administrator determines that
23 the average processing time for such applications is not more than
24 15 days.

25 (3) LOAN TERMS.—A loan under this subsection shall be made on
26 the same terms as a loan under section 221102 of this title.

27 **§ 221109. Interest rates**

28 (a) IN GENERAL.—Notwithstanding any other provision of law, except as
29 provided in subsection (b), the interest rate on the Administrator's share
30 of a loan under the disaster loan program shall not exceed—

31 (1) the average annual interest rate on all interest-bearing obliga-
32 tions of the United States then forming a part of the public debt as
33 computed at the end of the fiscal year next preceding the date of the
34 loan and adjusted to the nearest 0.125 percent; plus

35 (2) 0.25 percent.

36 (b) LOANS UNDER SECTION 221101 OR 221102.—Notwithstanding any
37 other provision of law, the interest rate on the Federal share of a loan
38 under section 221101 or 221102 of this title, determined as of the date on
39 which the disaster commenced, shall be—

40 (1) in the case of a homeowner unable to secure credit elsewhere,
41 the lesser of—

1 (A) a rate prescribed by the Administrator, not to exceed half
2 a rate determined by the Secretary of the Treasury taking into
3 consideration the current average market yield on outstanding
4 marketable obligations of the United States with remaining peri-
5 ods to maturity comparable to the average maturities of such
6 loans plus an additional charge of not to exceed 1 percent per year
7 as determined by the Administrator, and adjusted to the nearest
8 0.125 percent; or

9 (B) 4 percent per year;

10 (2) in the case of a homeowner able to secure credit elsewhere, the
11 lesser of—

12 (A) a rate prescribed by the Administrator, not to exceed a rate
13 determined by the Secretary of the Treasury taking into consider-
14 ation the current average market yield on outstanding marketable
15 obligations of the United States with remaining periods to matu-
16 rity comparable to the average maturities of such loans plus an
17 additional charge of not to exceed 1 percent per year as deter-
18 mined by the Administrator, and adjusted to the nearest 0.125
19 percent; or

20 (B) 8 percent per year;

21 (3) in the case of a business concern, private nonprofit organization,
22 or other concern (including an agricultural cooperative) unable to ob-
23 tain credit elsewhere, not to exceed 4 percent per year; or

24 (4) in the case of a business concern able to obtain credit elsewhere,
25 a rate prescribed by the Administrator, not to exceed the lowest of—

26 (A) the rate prevailing in the private market for similar loans;

27 (B) the rate prescribed by the Administrator as the maximum
28 interest rate for deferred participation (guaranteed) loans under
29 the general business loan program; or

30 (C) 8 percent per year.

31 **§ 221110. Maximum term**

32 No loan under the disaster loan program (including any renewal or exten-
33 sion of a loan) may be made for a period or periods exceeding—

34 (1) 30 years; or

35 (2) in the case of a loan to a business concern under section
36 221109(b)(2)(D) of this title that is able to obtain credit elsewhere, 7
37 years.

38 **§ 221111. Deferral of repayment**

39 (a) IN GENERAL.—In making a loan under this chapter, the Adminis-
40 trator may provide the person receiving the loan an option to defer repay-
41 ment on the loan.

1 (b) DEFERMENT PERIOD.—The period of a deferment under subsection
2 (a) shall not exceed 4 years.

3 **§ 221112. Suspension of payments**

4 (a) IN GENERAL.—The Administrator may consent to a suspension in the
5 payment of principal and interest on, and to an extension in the maturity
6 of, the Federal share of a loan under the disaster loan program, for a period
7 not to exceed 5 years, if—

8 (1) the borrower under the loan is a homeowner or a small business
9 concern;

10 (2) the loan was made to enable—

11 (A) the homeowner to repair or replace his or her home; or

12 (B) the small business concern to repair or replace plant or
13 equipment that was damaged or destroyed as the result of a disaster
14 described in clause (i) or (ii) of section 221102(b)(2)(A) of this
15 title; and

16 (3) the Administrator determines that the suspension is necessary to
17 avoid severe financial hardship.

18 (b) PURCHASE OF PARTICIPATION OR ASSUMPTION OF OBLIGATION.—
19 During any period in which principal and interest charges are suspended
20 under subsection (a), the Administrator shall, on the request of any person
21 having a participation in the loan, purchase the participation, or assume the
22 obligation of the borrower, for the balance of the period, to make principal
23 and interest payments on the non-Federal share of the loan, if—

24 (1) the Administrator determines that the action is necessary to
25 avoid a default; and

26 (2) the borrower agrees to make payments to the Administrator in
27 an aggregate amount equal to the amount paid in the borrower's behalf
28 by the Administrator, in such manner and at such times (during or
29 after the term of the loan) as the Administrator determines having due
30 regard for the purposes sought to be achieved by this subsection.

31 **§ 221113. Participation in loans on deferred basis**

32 In an agreement to participate in a loan on a deferred basis under the
33 disaster loan program, participation by the Administrator shall not be in excess
34 of 90 percent of the balance of the loan outstanding at the time of
35 disbursement.

36 **§ 221114. Assistance and counseling for disaster victims**

37 In administering the disaster assistance programs, to the maximum extent
38 possible, the Administrator shall provide assistance and counseling to
39 disaster victims in—

40 (1) filing applications (including the provision of information relevant
41 to loan processing); and

1 (2) loan closing and prompt disbursement of loan proceeds.

2 **§ 221115. Priority in allocating funds**

3 In administering the disaster assistance programs, to the maximum ex-
4 tent possible, the Administrator shall give the disaster loan program a high
5 priority in allocating funds for administrative expenses.

6 **§ 221116. Prohibition of cancellation of certain disaster**
7 **loans**

8 No portion of a loan under section 221101 or 221102 of this title shall
9 be subject to cancellation under any provision of law.

10 **§ 221117. Prohibition of net earnings clauses**

11 In making a loan under this chapter, the Administrator shall not require
12 the borrower to pay any nonamortized amount for the 1st 5 years after re-
13 payment begins.

14 **§ 221118. Biennial disaster simulation exercise**

15 (a) IN GENERAL.—The Administrator shall conduct a disaster simulation
16 exercise at least once every 2 fiscal years.

17 (b) REQUIREMENTS.—A disaster simulation exercise shall—

18 (1) include the participation of, at a minimum, not fewer than 50
19 percent of the individuals in the disaster reserve corps; and

20 (2) test, at maximum capacity, all of the information technology and
21 telecommunications systems of the Administrator that are vital to the
22 activities of the Administrator during a disaster.

23 (c) REPORT.—The Administrator shall include in a report under section
24 107118(g) of this title a report on a disaster simulation exercise conducted
25 under subsection (a).

26 **§ 221119. Disaster planning responsibilities**

27 (a) DEFINITIONS.—In this section:

28 (1) DISASTER PLANNING OFFICER.—The term “disaster planning of-
29 ficer” means the individual to whom the disaster planning function of
30 the Administrator is assigned under subsection (b).

31 (2) STATE.—The term “State” means a State of the United States,
32 the District of Columbia, Puerto Rico, the Northern Mariana Islands,
33 the Virgin Islands, Guam, American Samoa, and any territory or pos-
34 session of the United States.

35 (b) ASSIGNMENT OF SBA DISASTER PLANNING RESPONSIBILITIES.—The
36 disaster planning function of the Administrator shall be assigned to an indi-
37 vidual appointed by the Administrator who—

38 (1) is not an employee of the Office of Disaster Assistance of SBA;

39 (2) has proven management ability;

40 (3) has substantial knowledge in the field of disaster readiness and
41 emergency response; and

1 (4) has demonstrated significant experience in the area of disaster
2 planning.

3 (c) RESPONSIBILITIES.—The disaster planning officer shall report di-
4 rectly and solely to the Administrator and shall be responsible for—

5 (1) developing, implementing, and maintaining the comprehensive
6 disaster response plan under section 221120 of this title;

7 (2) ensuring that there are in-service and pre-service training proce-
8 dures for SBA disaster response staff;

9 (3) coordinating and directing SBA training exercises relating to dis-
10 asters, including disaster simulation exercises and disaster exercises
11 coordinated with other government agencies; and

12 (4) other responsibilities relevant to disaster planning and readiness,
13 as determined by the Administrator.

14 (d) COORDINATION.—In carrying out the responsibilities described in sub-
15 section (c), the disaster planning officer shall coordinate with—

16 (1) the Office of Disaster Assistance of SBA;

17 (2) the Administrator of the Federal Emergency Management Agen-
18 cy; and

19 (3) other Federal, State, and local disaster planning offices, as nec-
20 essary.

21 (e) RESOURCES.—The Administrator shall ensure that the disaster plan-
22 ning officer has adequate resources to carry out the responsibilities de-
23 scribed in subsection (c).

24 **§ 221120. Disaster response plan**

25 (a) DEFINITION OF STATE.—In this section, the term “State” means a
26 State of the United States, the District of Columbia, Puerto Rico, the
27 Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and
28 any territory or possession of the United States.

29 (b) PLAN.—

30 (1) IN GENERAL.—The Administrator shall develop, implement, and
31 maintain a comprehensive written disaster response plan.

32 (2) CONTENTS.—The disaster response plan shall include the follow-
33 ing:

34 (A) For each SBA region, a description of the disasters most
35 likely to occur in the SBA region.

36 (B) For each disaster described under subparagraph (A)—

37 (i) an assessment of the disaster;

38 (ii) an assessment of the demand for SBA assistance most
39 likely to occur in response to the disaster;

40 (iii) an assessment of the needs of SBA, with respect to
41 such resources as information technology, telecommunica-

1 tions, human resources, and office space, to meet the demand
2 referred to in clause (ii); and

3 (iv) guidelines pursuant to which the Administrator will
4 coordinate with other Federal agencies and with State and
5 local authorities to best respond to the demand described in
6 clause (ii) and to best use the resources referred to in clause
7 (iii).

8 (e) PLAN REVISION.—The Administrator shall update the disaster re-
9 sponse plan—

10 (1) annually; and

11 (2) following any major disaster relating to which the Administrator
12 declares eligibility for additional disaster assistance under section
13 221108 of this title.

14 (d) REQUIRED KNOWLEDGE.—The Administrator shall carry out sub-
15 sections (b) and (c) through an individual with substantial knowledge in the
16 field of disaster readiness and emergency response.

17 (e) REPORT.—The Administrator shall include in a report under section
18 107118(g) of this title a report on the disaster response plan.

19 **§ 221121. Coordination of disaster assistance programs with**
20 **FEMA**

21 (a) IN GENERAL.—The Administrator shall ensure that the SBA disaster
22 assistance programs are coordinated, to the maximum extent practicable,
23 with the disaster assistance programs of the Federal Emergency Manage-
24 ment Agency.

25 (b) REGULATIONS.—

26 (1) IN GENERAL.—The Administrator, in consultation with the Ad-
27 ministrator of the Federal Emergency Management Agency, shall es-
28 tablish regulations to ensure that each application for disaster assist-
29 ance is submitted as quickly as practicable to SBA or directed to the
30 appropriate agency under the circumstances.

31 (2) REVISION.—The regulations shall be revised annually.

32 (c) REPORT.—The Administrator shall include in a report under section
33 107118(g) of this title a report on the regulations under subsection (b).

34 **§ 221122. Plans to secure sufficient office space**

35 (a) IN GENERAL.—The Administrator shall develop long-term plans to se-
36 cure sufficient office space to accommodate an expanded workforce in times
37 of disaster.

38 (b) REPORT.—The Administrator shall include in a report under section
39 107118(g) of this title a report on the plans developed under subsection (a).

1 **§ 221123. Bond guarantees in procurements relating to a**
2 **major disaster**

3 (a) IN GENERAL.—Except as provided in subsection (b), and notwith-
4 standing any other provision of law, for any procurement relating to a major
5 disaster, the Administrator may, on such terms and conditions as the Ad-
6 ministrator may prescribe, guarantee and enter into commitments to guar-
7 antee a surety against loss resulting from a breach of the terms of a bid
8 bond, payment bond, performance bond, or bonds ancillary thereto, by a
9 principal on any total work order or contract amount at the time of bond
10 execution that does not exceed \$5,000,000.

11 (b) INCREASE IN AMOUNT.—On request of the head of any Federal agen-
12 cy (other than SBA) involved in reconstruction efforts in response to a
13 major disaster, the Administrator may guarantee and enter into a commit-
14 ment to guarantee a surety against loss under subsection (a) on any total
15 work order or contract amount at the time of bond execution that does not
16 exceed \$10,000,000.

17 (c) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may
18 carry out this section only with amounts appropriated in advance specifically
19 to carry out this section.

20 **§ 221124. Civil penalty**

21 A person that wrongfully misapplies the proceeds of a loan made under
22 the disaster loan program shall be liable to the Administrator for a civil
23 penalty in the amount that is equal to 1.5 times the original principal
24 amount of the loan.

25 **Chapter 223—Private Disaster Assistance**
26 **Program**

Sec.

- 223101. Definitions.
- 223102. Program.
- 223103. Use of loans.
- 223104. Online applications.
- 223105. Maximum amounts.
- 223106. Terms and conditions.
- 223107. Lenders.
- 223108. Fees.
- 223109. Documentation.
- 223110. Purchase of loans.
- 223111. Regulations.
- 223112. Authorization of appropriations.

27 **§ 223101. Definitions**

28 In this chapter:

29 (1) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an
30 individual who is eligible for disaster assistance under section 221101
31 of this title relating to a major disaster relating to which the Adminis-
32 trator declares eligibility for additional disaster assistance under sec-
33 tion 221108 of this title.

1 (2) MAJOR DISASTER AREA.—The term “major disaster area” means
2 an area for which the President declares a major disaster relating to
3 which the Administrator declares eligibility for additional disaster as-
4 sistance under section 221108 of this title, during the period of the
5 major disaster declaration.

6 (3) QUALIFIED PRIVATE LENDER.—The term “qualified private lend-
7 er” means a privately-owned bank or other lending institution that—

8 (A) is not a preferred lender; and

9 (B) the Administrator determines meets the criteria established
10 under section 223111 of this title.

11 (4) SMALL BUSINESS CONCERN.—The term “small business concern”
12 means a small business concern (as defined in section 101102 or
13 301101 of this title).

14 **§ 223102. Program**

15 The Administrator shall carry out a program, to be known as the private
16 disaster assistance program, under which the Administrator may guarantee
17 timely payment of principal and interest, as scheduled, on any loan made
18 to a small business concern located in a major disaster area or to an eligible
19 individual.

20 **§ 223103. Use of loans**

21 A loan guaranteed by the Administrator under this chapter may be used
22 for any purpose authorized under chapter 221.

23 **§ 223104. Online applications**

24 (a) ESTABLISHMENT OF PROCESS.—The Administrator may establish, di-
25 rectly or through an agreement with another entity, an online application
26 process for loans guaranteed under this chapter.

27 (b) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate
28 with the head of any other appropriate Federal agency so that any applica-
29 tion submitted through an online application process established under this
30 section may be considered for any other Federal assistance program for dis-
31 aster relief.

32 (c) CONSULTATION.—In establishing an online application process under
33 this section, the Administrator shall consult with appropriate persons from
34 the public and private sectors, including private lenders.

35 **§ 223105. Maximum amounts**

36 (a) GUARANTEE PERCENTAGE.—The Administrator may guarantee not
37 more than 85 percent of a loan under this chapter.

38 (b) LOAN AMOUNT.—The maximum amount of a loan guaranteed under
39 this chapter shall be \$2,000,000.

1 **§ 223106. Terms and conditions**

2 A loan guaranteed under this chapter shall be made under the same
3 terms and conditions as a loan under chapter 221.

4 **§ 223107. Lenders**

5 (a) IN GENERAL.—

6 (1) LOANS TO AN ELIGIBLE INDIVIDUAL.—A loan guaranteed under
7 this chapter made to an eligible individual may be made by a preferred
8 lender.

9 (2) LOANS TO A SMALL BUSINESS CONCERN.—A loan guaranteed
10 under this chapter made to a small business concern may be made by
11 a qualified private lender or by a preferred lender that also makes
12 loans to eligible individuals.

13 (b) COMPLIANCE.—If the Administrator determines that a preferred lend-
14 er knowingly failed to comply with the underwriting standards for loans
15 guaranteed under this chapter or violated the terms of the standard operat-
16 ing procedure agreement between the preferred lender and the Adminis-
17 trator, the Administrator shall do 1 or both of the following:

18 (1) Exclude the preferred lender from participating in the private
19 disaster assistance program.

20 (2) Exclude the preferred lender from participating in the preferred
21 lender program for a period of not more than 5 years.

22 **§ 223108. Fees**

23 (a) IN GENERAL.—The Administrator shall not collect a guarantee fee
24 under this chapter.

25 (b) ORIGINATION FEE.—The Administrator may pay a qualified private
26 lender or preferred lender an origination fee for a loan guaranteed under
27 this chapter in an amount agreed on in advance between the qualified pri-
28 vate lender or preferred lender and the Administrator.

29 **§ 223109. Documentation**

30 (a) IN GENERAL.—A qualified private lender or preferred lender may use
31 its own loan documentation for a loan guaranteed by the Administrator
32 under this chapter, to the extent authorized by the Administrator.

33 (b) NOT PART OF QUALIFICATION CRITERIA.—The ability of a lender to
34 use its own loan documentation for a loan guaranteed under this chapter
35 shall not be considered part of the criteria for becoming a qualified private
36 lender under the regulations promulgated under section 223111 of this title.

37 **§ 223110. Purchase of loans**

38 The Administrator may enter into an agreement with a qualified private
39 lender or preferred lender to purchase any loan guaranteed under this chap-
40 ter.

1 **§ 223111. Regulations**

2 The Administrator shall promulgate regulations establishing permanent
3 criteria for qualified private lenders.

4 **§ 223112. Authorization of appropriations**

5 (a) IN GENERAL.—Amounts necessary to carry out this chapter shall be
6 made available from amounts appropriated to SBA to carry out chapter
7 221.

8 (b) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND
9 CONDITIONS.—Funds appropriated to SBA to carry out this chapter may
10 be used by the Administrator to meet the loan terms and conditions speci-
11 fied in section 223106 of this title.

12 **Chapter 225—Immediate Disaster**
13 **Assistance Program**

Sec.

225101. Definition of program.

225102. Program.

225103. Eligibility.

225104. Use of proceeds.

225105. Loan terms.

225106. Approval or disapproval.

14 **§ 225101. Definition of program**

15 In this chapter, the term “program” means the immediate disaster assist-
16 ance program established under section 225102 of this title.

17 **§ 225102. Program**

18 The Administrator shall carry out a program, to be known as the imme-
19 diate disaster assistance program, under which the Administrator partici-
20 pates on a deferred (guaranteed) basis in 85 percent of the balance of the
21 financing outstanding at the time of disbursement of the loan if the balance
22 is less than or equal to \$25,000 for business concerns affected by a disaster.

23 **§ 225103. Eligibility**

24 To receive a loan guarantee under section 225102 of this title, an appli-
25 cant shall apply for, and meet basic eligibility standards for, a loan under
26 chapter 221 or 223.

27 **§ 225104. Use of proceeds**

28 A business concern that receives a loan under chapter 221 or 223 shall
29 use the proceeds of the loan to repay all loans guaranteed under section
30 225102 of this title, if any, before using the proceeds for any other purpose.

31 **§ 225105. Loan terms**

32 (a) NO PREPAYMENT PENALTY.—There shall be no prepayment penalty
33 on a loan guaranteed under section 225102 of this title.

34 (b) REPAYMENT.—A business concern that receives a loan guaranteed
35 under section 225102 of this title and that is disapproved for a loan under
36 chapter 221 or 223 shall repay the loan guaranteed under section 225102

1 of this title not later than the date established by the Administrator, which
2 shall not be earlier than 10 years after the date on which the loan guaran-
3 teed under section 225102 of this title is disbursed.

4 **§ 225106. Approval or disapproval**

5 The Administrator shall ensure that each applicant for a loan under the
6 program receives a decision approving or disapproving the application within
7 36 hours after the Administrator receives the application.

8 **Chapter 227—Expedited Disaster Assist-**
9 **ance Business Loan Guarantee Program**

Sec.

227101. Definition of program.

227102. Program.

227103. Consultation.

227104. Regulations.

10 **§ 227101. Definition of program**

11 In this chapter, the term “program” means the expedited disaster assist-
12 ance business loan guarantee program established under section 227102 of
13 this title.

14 **§ 227102. Program**

15 The Administrator shall establish and implement an expedited disaster
16 assistance business loan guarantee program under which the Administrator
17 may, on an expedited basis, guarantee timely payment of principal and in-
18 terest, as scheduled on any loan made to an eligible small business concern
19 under section 221108 of this title.

20 **§ 227103. Consultation**

21 In establishing the program, the Administrator shall consult with—

22 (1) appropriate personnel (including SBA district office personnel) of
23 SBA;

24 (2) appropriate technical assistance providers (including small busi-
25 ness development centers);

26 (3) appropriate lenders and credit unions; and

27 (4) the Committee on Small Business and Entrepreneurship of the
28 Senate and Committee on Small Business of the House of Representa-
29 tives.

30 **§ 227104. Regulations**

31 (a) IN GENERAL.—The Administrator shall issue regulations establishing
32 and implementing the program in accordance with this chapter.

33 (b) CONTENTS.—The regulations shall—

34 (1) identify whether appropriate uses of funds under the program
35 may include—

36 (A) paying employees;

37 (B) paying bills and other financial obligations;

38 (C) making repairs;

- 1 (D) purchasing inventory;
- 2 (E) restarting or operating a small business concern in the com-
3 munity in which the small business concern was conducting oper-
4 ations prior to the applicable major disaster or in a neighboring
5 area in the disaster area; or
- 6 (F) covering additional costs until the small business concern is
7 able to obtain funding through insurance claims, Federal assist-
8 ance programs, or other sources; and
- 9 (2) set the terms and conditions of any loan made under the pro-
10 gram.
- 11 (c) TERMS AND CONDITIONS.—A loan guaranteed by the Administrator
12 under the program—
- 13 (1) shall be for not more than \$150,000;
- 14 (2) shall be a short-term loan, not to exceed 180 days, except that
15 the Administrator may extend the term as the Administrator deter-
16 mines to be appropriate on a case-by-case basis;
- 17 (3) shall have an interest rate not to exceed 300 basis points above
18 the interest rate established by the Board of Governors of the Federal
19 Reserve System that 1 bank charges another for reserves that are lent
20 on an overnight basis on the date on which the loan is made;
- 21 (4) shall have no prepayment penalty;
- 22 (5) may be made only to a borrower that meets the requirements for
23 a loan under chapter 221;
- 24 (6) may be refinanced as part of any subsequent disaster assistance
25 provided under chapter 221;
- 26 (7) may receive expedited loss verification and loan processing, if the
27 applicant—
- 28 (A) is a major source of employment in the disaster area (which
29 shall be determined in the same manner as under section
30 221103(e)(2) of this title); or
- 31 (B) is vital to recovery efforts in the region (including providing
32 debris removal services, manufactured housing, or building mate-
33 rials); and
- 34 (8) shall be subject to such additional terms as the Administrator
35 determines to be appropriate.

36 **Division F—Business Development** 37 **Program**

38 **Chapter 231—General Provisions**

Sec.

231101. Definitions.

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1 **§ 231101. Definitions**

2 In this division:

3 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-
4 trator” means the Associate Administrator for Minority Small Business
5 and Capital Ownership Development.

6 (2) BUSINESS ACTIVITY TARGET.—The term “business activity tar-
7 get” means a target contained in a business plan for contracts awarded
8 other than through the program.

9 (3) BUSINESS OPPORTUNITY SPECIALIST.—The term “business op-
10 portunity specialist” means an SBA employee responsible for providing
11 business development assistance to a program participant.

12 (4) BUSINESS PLAN.—The term “business plan” means the business
13 plan of a program participant under section 233118 of this title.

14 (5) DIRECTOR.—The term “Director” means the Director of the Di-
15 vision.

16 (6) DISADVANTAGED OWNER.—The term “disadvantaged owner”
17 means an individual on whom eligibility is based for participation in
18 the business development program.

19 (7) DIVISION.—The term “Division” means the Division of Program
20 Certification and Eligibility established by section 103108 of this title.

21 (8) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term
22 “economically disadvantaged Indian tribe” means an Indian tribe that
23 the Administrator determines to be economically disadvantaged based
24 on consideration of available information such as—

25 (A) the per capita income of members of the Indian tribe, ex-
26 cluding judgment awards;

27 (B) the percentage of the local Indian population below the pov-
28 erty level; and

29 (C) the Indian tribe’s access to capital markets.

30 (9) EXECUTIVE AGENCY.—The term “executive agency” has the
31 meaning given the term in section 133 of title 41.

32 (10) GRADUATE.—The term “graduate”, with reference to a pro-
33 gram participant, means to graduate the program participant from the
34 program under section 233120 of this title.

35 (11) INDIAN TRIBE.—The term “Indian tribe” means an Indian
36 tribe, band, nation, or other organized group or community of Indians,
37 including any Alaska Native village or regional or village corporation

1 (within the meaning of the Alaska Native Claims Settlement Act (43
2 U.S.C. 1601 et seq.)) that—

3 (A) is recognized as eligible for the special programs and serv-
4 ices provided by the United States to Indians because of their
5 status as Indians; or

6 (B) is recognized as such by the State in which the Indian tribe,
7 band, nation, group, or community resides.

8 (12) PROGRAM.—The term “program” means the business develop-
9 ment program.

10 (13) PROGRAM PARTICIPANT.—The term “program participant”
11 means a small business concern that is participating in the program.

12 (14) PROGRAM PARTICIPATION PERIOD.—The term “program par-
13 ticipation period”, with respect to a program participant, means the pe-
14 riod of program participation applicable to the program participant
15 under section 233129 of this title.

16 (15) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-
17 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—

18 (A) IN GENERAL.—The term “small business concern owned
19 and controlled by socially and economically disadvantaged individ-
20 uals” means a small business concern—

21 (i) not less than 51 percent of which is unconditionally
22 owned by—

23 (I) 1 or more socially and economically disadvantaged
24 individuals;

25 (II) an economically disadvantaged Indian tribe (or a
26 wholly owned business entity of an economically dis-
27 advantaged Indian tribe); or

28 (III) an economically disadvantaged Native Hawaiian
29 organization; and

30 (ii) the management and daily business operations of which
31 are controlled by 1 or more—

32 (I) socially and economically disadvantaged individ-
33 uals;

34 (II) members of an economically disadvantaged Indian
35 tribe; or

36 (III) Native Hawaiian organizations.

37 (B) SIZE DETERMINATION FOR INDIAN TRIBES.—In determin-
38 ing the size of a concern owned by an economically disadvantaged
39 Indian tribe (or a wholly owned business entity of an economically
40 disadvantaged Indian tribe) for purposes of subparagraph (A), the
41 concern’s size shall be independently determined without regard to

1 its affiliation with the Indian tribe, any entity of the tribal govern-
2 ment, or any other business enterprise owned by the Indian tribe,
3 unless the Administrator determines that 1 or more such tribally
4 owned business concerns have obtained, or are likely to obtain, a
5 substantial unfair competitive advantage within an industry cat-
6 egory.

7 (16) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—

8 (A) IN GENERAL.—The term “socially and economically dis-
9 advantaged individual” means a member of a group of socially dis-
10 advantaged individuals whose ability to compete in the free enter-
11 prise system has been impaired due to diminished capital and
12 credit opportunities as compared with others in the same business
13 area who are not socially disadvantaged.

14 (B) DETERMINATION OF DEGREE OF DIMINISHED CREDIT AND
15 CAPITAL OPPORTUNITIES.—In determining the degree of dimin-
16 ished credit and capital opportunities, the Administrator shall con-
17 sider, among other things, the assets and net worth of a socially
18 disadvantaged individual.

19 (C) NET WORTH.—In computing personal net worth for pur-
20 poses of this paragraph, there shall be excluded—

21 (i) the value of investments that disadvantaged owners
22 have in their concern, except that the value of such invest-
23 ments shall be taken into account when comparing the con-
24 cern to other concerns in the same business area that are
25 owned by other than socially disadvantaged persons; and

26 (ii) the equity that disadvantaged owners have in their pri-
27 mary personal residences, except that any portion of such eq-
28 uity that is attributable to unduly excessive withdrawals from
29 a program participant or a concern applying for program par-
30 ticipation shall be taken into account.

31 (17) SOCIALLY DISADVANTAGED INDIVIDUAL.—

32 (A) IN GENERAL.—The term “socially disadvantaged individ-
33 ual” means a member of a group of individuals who have been
34 subjected to racial or ethnic prejudice or cultural bias because of
35 their identity as members of the group without regard to their in-
36 dividual qualities.

37 (B) DETERMINATION.—A determination under subparagraph
38 (A) with respect to whether a group has been subjected to preju-
39 dice or bias shall be made by the Administrator after consultation
40 with the Associate Administrator for Minority Small Business and
41 Capital Ownership Development.

1 (18) TERMINATE.—The term “terminate”, with reference to a pro-
2 gram participant, means to suspend or totally deny assistance to a pro-
3 gram participant under the program, prior to the graduation of the
4 program participant or prior to the expiration of the program partici-
5 pant’s program participation period, under section 233121 of this title.

6 **§ 231102. Establishment of business development program**

7 There is established within SBA the business development program,
8 which shall provide assistance exclusively for small business concerns eligible
9 to receive contracts under chapter 233.

10 **§ 231103. Unemployed or low-income individuals**

11 The program shall be used to—

12 (1) assist in the establishment, preservation, and strengthening of
13 small business concerns and improve the managerial skills employed in
14 small business concerns, with special attention to, and particular em-
15 phasis on the preservation or establishment of, small business concerns
16 that are—

17 (A) located in urban or rural areas with high proportions of un-
18 employed or low-income individuals; or

19 (B) owned by low-income individuals; and

20 (2) mobilize for those objectives private as well as public managerial
21 skills and resources.

22 **§ 231104. Restrictions on activities of SBA employees**

23 (a) ACTIVITIES AND TRANSACTIONS RELATING TO OWNERSHIP OF A
24 PROGRAM PARTICIPANT.—

25 (1) IN GENERAL.—A person within the employ of SBA shall not,
26 during the term of such employment and for a period of 2 years after
27 the employment has been terminated, engage in any activity or trans-
28 action described in paragraph (2) with respect to any program partici-
29 pant during the person’s term of employment, if the person partici-
30 pated personally (directly or indirectly)—

31 (A) in decisionmaking responsibilities relating to the program
32 participant; or

33 (B) with respect to the administration of any assistance pro-
34 vided to program participants generally under the program.

35 (2) ACTIVITIES AND TRANSACTIONS.—The activities and transactions
36 referred to in paragraph (1) are—

37 (A) the buying, selling, or receiving (except by inheritance) of
38 any legal or beneficial ownership of stock or any other ownership
39 interest or the right to acquire any such interest;

1 (B) the entering into or execution of any written or oral agree-
2 ment (whether or not legally enforceable) to purchase or otherwise
3 obtain any right or interest described in subparagraph (A); and

4 (C) the receipt of any other benefit or right that may be an inci-
5 dent of ownership.

6 (3) ANNUAL CERTIFICATION.—

7 (A) IN GENERAL.—An employee described in subparagraph (B)
8 shall annually submit to the Administrator a written certification
9 regarding compliance with this section.

10 (B) EMPLOYEE.—The employees referred to in subparagraph

11 (A) are—

12 (i) a regional administrator;

13 (ii) a district director;

14 (iii) the Associate Administrator;

15 (iv) an employee whose principal duties relate to the award
16 of contracts or the provision of other assistance under the
17 program; and

18 (v) such other employees as the Administrator may des-
19 ignate.

20 (4) CIVIL PENALTIES.—

21 (A) IN GENERAL.—An employee or former employee of SBA
22 who violates this section shall be subject to a civil penalty, as-
23 sessed by the Attorney General, that shall not exceed 300 percent
24 of the maximum amount of gain that the employee realized or
25 could have realized as a result of engaging in the activity and
26 transaction prohibited by paragraph (1).

27 (B) FALSE CERTIFICATION.—In addition to any other remedy
28 or sanction provided for under law (including a regulation), a per-
29 son who makes a false certification under paragraph (3)(A) shall
30 be subject to a civil penalty under section 3802 of title 31.

31 (b) POLITICAL ACTIVITIES AND AFFILIATIONS.—

32 (1) PROHIBITION.—An employee of SBA who has authority to take,
33 direct others to take, recommend, or approve any action with respect
34 to any program or activity under the program shall not, with respect
35 to any such action, exercise or threaten to exercise that authority on
36 the basis of the political activity or affiliation of any person.

37 (2) REPORTING OF SOLICITATION TO VIOLATE.—An employee of
38 SBA whose participation in a violation of paragraph (1) is directed or
39 solicited shall expeditiously report the direction or solicitation to the In-
40 spector General of SBA.

1 (3) DISCIPLINARY ACTION.—An employee of SBA who willfully and
2 knowingly violates paragraph (1) or (2) shall be subject to disciplinary
3 action, which may consist of separation from service, reduction in
4 grade, suspension, or reprimand.

5 (4) APPLICABILITY.—Paragraphs (1) and (2) do not apply to an ac-
6 tion taken as a penalty or other enforcement of a violation of any law
7 (including a regulation) prohibiting or restricting political activity.

8 (5) OTHER PROHIBITIONS, MEASURES, AND LIABILITIES.—Para-
9 graphs (1) to (4) are in addition to, and not in lieu of, any other prohi-
10 bitions, measures, or liabilities that may arise under any other provi-
11 sion of law.

12 **§ 231105. Encouragement of subcontracts**

13 (a) IN GENERAL.—The Administrator shall encourage the placement of
14 subcontracts by businesses with small business concerns located in areas of
15 high concentration of unemployed or low-income individuals and with pro-
16 gram participants.

17 (b) INCENTIVES AND ASSISTANCE.—The Administrator may provide in-
18 centives and assistance to a business to aid in the training and upgrading
19 of—

20 (1) potential small business concern subcontractors; and

21 (2) program participants.

22 **§ 231106. Federal contracts, subcontracts, and deposits**

23 The Administrator shall take such steps as are necessary and appro-
24 priate, in coordination and cooperation with the heads of other Federal
25 agencies, to ensure that contracts, subcontracts, and deposits made by the
26 Federal Government or with programs aided with Federal funds are placed
27 in such a way as to further the purposes of the program.

28 **§ 231107. Business opportunity specialists**

29 (a) POSITION.—In each SBA field office responsible for assisting 1 or
30 more program participants there shall be a position designated as a business
31 opportunity specialist.

32 (b) ADEQUATE NUMBER.—To the maximum extent practicable, the Ad-
33 ministrator shall ensure that an adequate number of business opportunity
34 specialists are assigned to each district office to carry out the responsibil-
35 ities of the program and to assist program participants.

36 (c) TRAINING.—The Administrator shall take such actions as are appro-
37 priate to ensure that any person employed as a business opportunity special-
38 ist receives adequate periodic training to ensure that the employee is capable
39 of assisting program participants in fully utilizing the program and meeting
40 the requirements of this subtitle and subtitle I.

1 **§ 231108. Requests for investigation**

2 The Committee on Small Business and Entrepreneurship of the Senate
3 or the Committee on Small Business of the House of Representatives may
4 request that the Office of the Inspector General of SBA conduct an inves-
5 tigation of any activity conducted under the program. Not later than 30
6 days after the receipt of such a request, the Inspector General shall inform
7 the committee, in writing, of the disposition of the request.

8 **§ 231109. Use of procurement authority**

9 The procurement authority under the program shall be used only as a
10 tool for developing business ownership among groups that own and control
11 little productive capital.

12 **Chapter 233—Contracting**

Sec.

- 233101. Contracting authority.
- 233102. Contracting procedure.
- 233103. Fair market price.
- 233104. Award after completion of program participation period.
- 233105. Award through competition.
- 233106. Participation by program participants in negotiation of contracts to be awarded non-competitively.
- 233107. Sole source award.
- 233108. Annual certification regarding ownership and control.
- 233109. Annual submission regarding economic disadvantage.
- 233110. Review of economic disadvantage and withdrawal of assets.
- 233111. Hearing on the record.
- 233112. Program participant capability.
- 233113. Limitations on subcontracting.
- 233114. Wholesalers and retailers.
- 233115. Reporting by program participants to business opportunity specialists.
- 233116. Transfer of ownership or control.
- 233117. Assistance for program participants.
- 233118. Business plans.
- 233119. Denial of further assistance.
- 233120. Graduation.
- 233121. Termination.
- 233122. Evaluation of eligibility.
- 233123. Limitation of eligibility to 1 small business concern.
- 233124. Limitation on denial of admission into program based on unavailability of specific contract opportunities.
- 233125. Certification decision.
- 233126. Review of new entrants into the program.
- 233127. Program stages.
- 233128. Attainment of business activity targets.
- 233129. Program participation period.
- 233130. Collection of data on program operations.
- 233131. Approval of contract options and modifications.
- 233132. Orderly and efficient management of program.
- 233133. Participation in federally funded programs and projects.

13 **§ 233101. Contracting authority**

14 (a) IN GENERAL.—When the Administrator determines that such action
15 is necessary or appropriate, the Administrator shall—

16 (1) enter into contracts with procuring agencies obligating the Ad-
17 ministrator to furnish articles, equipment, supplies, services, or mate-

1 rials to the Government or to perform construction work for the Gov-
2 ernment; and

3 (2) arrange for the performance of such contracts by negotiating or
4 otherwise letting a subcontract to 1 or more small business concerns
5 owned and controlled by socially and economically disadvantaged indi-
6 viduals—

7 (A) for the manufacture, supply, assembly of the articles, equip-
8 ment, supplies, materials, or parts thereof, for the construction
9 work, for the services, or for servicing or processing in connection
10 with the manufacturing, construction, or services; or

11 (B) for such management services as are necessary to enable
12 the Administrator to perform the contract.

13 (b) CONSTRUCTION SUBCONTRACTS.—To the maximum extent prac-
14 ticable, construction subcontracts awarded by the Administrator under the
15 program shall be awarded within the county or State in which the work is
16 to be performed.

17 (c) INAPPLICABILITY TO CERTAIN PROCUREMENTS.—The requirements
18 of the program do not apply to—

19 (1) a procurement under conditions described in—

20 (A) paragraph (2), (3), (4), (5), or (7) of section 3304(a) of
21 title 41; or

22 (B) paragraph (2), (3), (4), (5), or (7) of section 2304(c) of
23 title 10; or

24 (2) a procurement by an executive agency for which the head of the
25 executive agency makes a determination in writing, after consultation
26 with the Administrator and the Administrator for Federal Procurement
27 Policy, that it is not appropriate or reasonable to publish a notice be-
28 fore issuing a solicitation.

29 **§ 233102. Contracting procedure**

30 (a) IN GENERAL.—If the Administrator certifies to a contracting officer
31 of a procuring agency that the Administrator is competent and responsible
32 to perform a specific Federal agency procurement contract to be let by the
33 contracting officer, the contracting officer may let the contract to the Ad-
34 ministrator on such terms and conditions as may be agreed on between the
35 Administrator and the contracting officer.

36 (b) FAILURE TO AGREE.—

37 (1) IN GENERAL.—If the Administrator and the contracting officer
38 fail to agree on a procurement contract—

39 (A) not later than 5 days after the date on which the Adminis-
40 trator is notified of the contracting officer's adverse decision, the

1 Administrator may notify the contracting officer of the intent to
2 appeal the adverse decision; and

3 (B) not later than 15 days after that date, the Administrator
4 shall file a written request for a reconsideration of the adverse de-
5 cision with the head of the procuring agency.

6 (2) ADVERSE DECISION.—For the purposes of paragraph (1)(A), a
7 contracting officer’s adverse decision includes—

8 (A) a decision not to make available for award under the pro-
9 gram a particular procurement requirement; and

10 (B) a failure to agree on the terms and conditions of a contract
11 to be awarded noncompetitively under the program.

12 (3) SUSPENSION OF ACTION.—On receipt of a notice of intent to ap-
13 peal under paragraph (1)(A), the agency head shall suspend further ac-
14 tion regarding the procurement until a written decision on the Adminis-
15 trator’s request for reconsideration is issued by the agency head, unless
16 the contracting officer makes a written determination that urgent and
17 compelling circumstances that significantly affect interests of the
18 United States will not permit waiting for a reconsideration of the ad-
19 verse decision.

20 (4) DENIAL OF REQUEST FOR RECONSIDERATION.—If the Adminis-
21 trator’s request for reconsideration is denied, the procuring agency
22 head shall specify the reasons why the small business concern selected
23 by the Administrator to perform the procurement requirement was de-
24 termined to be incapable of performing the procurement requirement,
25 and the findings supporting the determination, which shall be made a
26 part of the contract file for the requirement.

27 **§ 233103. Fair market price**

28 (a) IN GENERAL.—A contract may not be awarded under the program
29 if the award of the contract would result in a cost to the procuring agency
30 that exceeds a fair market price.

31 (b) DETERMINATION.—

32 (1) IN GENERAL.—The fair market price under subsection (a) shall
33 be determined by the procuring agency in accordance with this sub-
34 section.

35 (2) NEW PROCUREMENT.—

36 (A) IN GENERAL.—The estimate of a current fair market price
37 for a new procurement requirement, or a requirement that does
38 not have a satisfactory procurement history, shall be derived from
39 a price or cost analysis.

40 (B) FACTORS.—A price or cost analysis—

1 (i) may take into account prevailing market conditions,
2 commercial prices for similar products or services, or data ob-
3 tained from any other Federal agency; and

4 (ii) shall consider such cost or pricing data as may be time-
5 ly submitted by the Administrator.

6 (3) PROCUREMENTS WITH SATISFACTORY PROCUREMENT HIS-
7 TORY.—

8 (A) IN GENERAL.—The estimate of a current fair market price
9 for a procurement requirement that has a satisfactory procure-
10 ment history shall be based on recent award prices adjusted to en-
11 sure comparability.

12 (B) ADJUSTMENT.—An adjustment under subparagraph (A)
13 shall take into account differences in quantities, performance
14 times, plans, specifications, transportation costs, packaging and
15 packing costs, labor and materials costs, overhead costs, and any
16 other additional costs that are considered appropriate.

17 (c) ESTIMATION METHOD.—

18 (1) IN GENERAL.—On the request of the Administrator, the procur-
19 ing agency shall promptly submit to the Administrator a written state-
20 ment detailing the method used by the procuring agency to estimate
21 the current fair market price for the contract, identifying the informa-
22 tion, studies, analyses, and other data used by the procuring agency.

23 (2) NONDISCLOSURE.—The procuring agency's estimate of the cur-
24 rent fair market price and any supporting data furnished to the Ad-
25 ministrator shall not be disclosed to any potential offeror other than
26 the Administrator.

27 (d) PROTEST.—A small business concern selected by the Administrator
28 to perform or negotiate a contract to be let under the program may request
29 the Administrator to protest the procuring agency's estimate of the fair
30 market price for the contract.

31 **§ 233104. Award after completion of program participation**
32 **period**

33 The Administrator shall make an award to a small business concern
34 owned and controlled by socially and economically disadvantaged individuals
35 that has completed its program participation period if—

36 (1) the contract will be awarded as a result of an offer (including
37 price) submitted in response to a published solicitation relating to a
38 competition conducted under section 233105 of this title; and

39 (2) the prospective contract awardee was a program participant eligi-
40 ble for award of the contract on the date specified for receipt of offers
41 contained in the contract solicitation.

1 **§ 233105. Award through competition**

2 (a) IN GENERAL.—Except as provided in subsections (b) and (c), a con-
3 tract opportunity offered for award under the program shall be awarded on
4 the basis of competition restricted to eligible program participants if—

5 (1) there is a reasonable expectation that—

6 (A) at least 2 eligible program participants will submit offers;

7 and

8 (B) an award can be made at a fair market price; and

9 (2) the anticipated award price of the contract (including options)
10 will exceed—

11 (A) \$5,000,000, in the case of a contract opportunity assigned
12 a North American Industry Classification System code for manu-
13 facturing; or

14 (B) \$3,000,000, in the case of any other contract opportunity.

15 (b) RESTRICTED COMPETITION FOR SMALLER CONTRACTS.—

16 (1) IN GENERAL.—The Associate Administrator may approve a re-
17 quest from a Federal agency to award a contract opportunity under the
18 program on the basis of a competition restricted to eligible program
19 participants even if the anticipated award price is not expected to ex-
20 ceed the dollar amounts specified in subsection (a)(2).

21 (2) APPROVALS.—Approvals under paragraph (1) shall be granted
22 only on a limited basis.

23 (3) NONDELEGABILITY.—The authority of the Associate Adminis-
24 trator under paragraph (1) may not be delegated.

25 (c) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY AN ECONOMI-
26 CALLY DISADVANTAGED INDIAN TRIBE.—Subsection (a) does not preclude
27 the award of a sole source contract under section 233107 of this title, with-
28 out regard to the anticipated award price of the contract, to a program par-
29 ticipant that is owned and controlled by an economically disadvantaged In-
30 dian tribe.

31 (d) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY NATIVE HA-
32 WAIIAN ORGANIZATIONS.—For purposes of contracting with agencies of the
33 Department of Defense, subsection (a) does not preclude the award of a sole
34 source contract under section 233107 of this title, without regard to the an-
35 ticipated award price of the contract, to a program participant that is
36 owned and controlled by a Native Hawaiian organization.

37 **§ 233106. Participation by program participants in negotia-**
38 **tion of contracts to be awarded noncompetitively**

39 A program participant selected by the Administrator to perform a con-
40 tract to be let noncompetitively under the program shall, when practicable,
41 participate in any negotiation of the terms and conditions of the contract.

1 **§ 233107. Sole source award**

2 (a) IN GENERAL.—The Administrator shall award a sole source contract
3 under the program to a program participant recommended by the Federal
4 agency offering the contract opportunity if—

5 (1) the program participant is determined to be a responsible con-
6 tractor with respect to performance of the contract;

7 (2) the award of the contract would be consistent with the program
8 participant's business plan; and

9 (3) the award of the contract would not result in the program par-
10 ticipant's exceeding the requirements established by section 233128 of
11 this title.

12 (b) EQUITABLE GEOGRAPHIC DISTRIBUTION.—To the maximum extent
13 practicable, the Administrator shall promote the equitable geographic dis-
14 tribution of sole source contracts awarded under this section.

15 **§ 233108. Annual certification regarding ownership and con-**
16 **trol**

17 A program participant shall annually certify that the program participant
18 meets the requirements of section 231101(15) of this title regarding owner-
19 ship and control.

20 **§ 233109. Annual submission regarding economic disadvan-**
21 **tage**

22 A program participant shall annually submit to the Administrator—

23 (1) a personal financial statement for each disadvantaged owner;

24 (2) a record of all payments made by the program participant to
25 each of its disadvantaged owners or to any person or entity affiliated
26 with its disadvantaged owners; and

27 (3) such other information as the Administrator considers necessary
28 to make the determinations required by paragraphs (8) and (16) of
29 section 231101 of this title and section 233110 of this title.

30 **§ 233110. Review of economic disadvantage and withdrawal**
31 **of assets**

32 (a) ECONOMIC DISADVANTAGE.—If, on the basis of information provided
33 by a program participant under section 233109 of this title or information
34 otherwise obtained by the Administrator, the Administrator has reason to
35 believe that the standards to establish economic disadvantage under section
36 231101(15) of this title are not met, the Administrator shall conduct a re-
37 view to determine whether the program participant and its disadvantaged
38 owners continue to be impaired in their ability to compete in the free enter-
39 prise system due to diminished capital and credit opportunities as compared
40 with others in the same business area who are not socially disadvantaged.

41 (b) WITHDRAWAL OF ASSETS.—

1 (1) IN GENERAL.—If, on the basis of information provided by a pro-
2 gram participant under section 233109 of this title or information
3 otherwise obtained by the Administrator, the Administrator has reason
4 to believe that the amount of funds or other assets withdrawn from a
5 program participant for the personal benefit of its disadvantaged own-
6 ers or any person or entity affiliated with its disadvantaged owners
7 may have been unduly excessive, the Administrator shall conduct a re-
8 view to determine whether the withdrawal of funds or other assets was
9 detrimental to the achievement of the targets, objectives, and goals con-
10 tained in the program participant’s business plan.

11 (2) TERMINATION OR REQUIREMENT TO REINVEST ASSETS.—If the
12 Administrator determines in a review under paragraph (1) that funds
13 or other assets have been withdrawn to the detriment of the program
14 participant’s business, the Administrator shall—

15 (A) initiate a proceeding to terminate the program participant
16 under section 233121 of this title; or

17 (B) require an appropriate reinvestment of funds or other assets
18 and such other steps as the Administrator considers necessary to
19 ensure the protection of the program participant.

20 **§ 233111. Hearing on the record**

21 (a) OPPORTUNITY FOR HEARING.—Before taking an action described in
22 subsection (b) with respect to a small business concern, the Administrator
23 shall provide the small business concern an opportunity for a hearing on the
24 record in accordance with chapter 5 of title 5.

25 (b) ACTIONS.—The actions referred to in subsection (a) are—

26 (1) denial of admission to the program based on a determination
27 that—

28 (A) a small business concern is not a small business concern
29 owned and controlled by socially and economically disadvantaged
30 individuals under section 231101(15) of this title;

31 (B) 1 or more of the owners of a small business concern is not
32 a socially disadvantaged individual under section 231101(17) of
33 this title; or

34 (C) 1 or more of the owners of a small business concern is not
35 a socially and economically disadvantaged individual under section
36 231101(16);

37 (2) graduation under section 233120 of this title;

38 (3) termination under section 233121 of this title; and

39 (4) denial of a request to issue a waiver under section 233116(b) of
40 this title.

1 (c) DECLINATION OF JURISDICTION.—The administrative law judge se-
2 lected to preside over a proceeding under this section shall decline to accept
3 jurisdiction over any matter that—

4 (1) does not, on its face, allege facts that, if proven to be true, would
5 warrant reversal or modification of the Administrator's position;

6 (2) is untimely filed;

7 (3) is not filed in accordance with the rules of procedure governing
8 the proceeding; or

9 (4) has been decided by or is the subject of an adjudication before
10 a court of competent jurisdiction over such matters.

11 (d) TIMING.—A proceeding under this section shall be completed and a
12 decision rendered, insofar as practicable, not later than 90 days after a peti-
13 tion for a hearing is filed with the Office of Hearings and Appeals.

14 (e) FINAL DECISION.—A decision rendered under this section shall be the
15 final decision of the Administrator and shall be binding on the Adminis-
16 trator and persons in the employ of the Administrator.

17 **§ 233112. Program participant capability**

18 (a) ELIGIBILITY FOR ASSISTANCE.—

19 (1) IN GENERAL.—A small business concern shall not be eligible for
20 assistance under the program unless the Administrator determines that
21 with contract, financial, technical, and management support, the small
22 business concern—

23 (A) will be able to perform contracts that may be awarded to
24 the small business concern under 233104 of this title; and

25 (B) has reasonable prospects for success in competing in the
26 private sector.

27 (2) PERIOD OF OPERATION.—

28 (A) IN GENERAL.—The Administrator may prescribe a mini-
29 mum period of time during which a prospective program partici-
30 pant must be in operation to meet the eligibility requirements of
31 paragraph (1) only if the Administrator provides a waiver of the
32 minimum period as provided in subparagraph (B).

33 (B) WAIVER.—The Administrator shall provide that any re-
34 quirement that the Administrator establishes regarding the period
35 of time during which a prospective program participant must have
36 been in operation may be waived, and that a prospective program
37 participant that otherwise meets the requirements of paragraph
38 (1) shall be considered to have demonstrated reasonable prospects
39 for success, if—

1 (i) the individual or individuals upon whom eligibility is to
2 be based have substantial and demonstrated business man-
3 agement experience;

4 (ii) the prospective program participant has demonstrated
5 technical expertise to carry out its business plan with a sub-
6 stantial likelihood for success;

7 (iii) the prospective program participant has adequate cap-
8 ital to carry out its business plan;

9 (iv) the prospective program participant has a record of
10 successful performance on contracts from governmental and
11 nongovernmental sources in the primary industry category in
12 which the prospective program participant is seeking certifi-
13 cation; and

14 (v) the prospective program participant has, or can dem-
15 onstrate its ability to timely obtain, the personnel, facilities,
16 equipment, and any other requirements needed to perform
17 such contracts.

18 (b) CAPABILITY.—

19 (1) CAPABILITY STATEMENTS.—

20 (A) ANNUAL SUBMISSION.—A program participant shall annu-
21 ally submit to the Administrator a capability statement.

22 (B) CONTENTS.—A capability statement shall—

23 (i) briefly describe the program participant's various con-
24 tract performance capabilities; and

25 (ii) include the name and telephone number of the business
26 opportunity specialist assigned the program participant.

27 (C) STATEMENT CATEGORIES.—The Administrator shall cat-
28 egorize capability statements as—

29 (i) statements indicating capability primarily dependent on
30 local contract support; and

31 (ii) statements indicating capability primarily requiring a
32 national marketing effort.

33 (D) DISSEMINATION OF CAPABILITY STATEMENTS.—

34 (i) LOCAL.—The Administrator shall disseminate capability
35 statements described in subparagraph (C)(i) to appropriate
36 contracting activities in the marketing area of each program
37 participant, respectively.

38 (ii) NATIONAL.—The Administrator shall disseminate capa-
39 bility statements described in subparagraph (C)(ii) to the Di-
40 rectors of Small and Disadvantaged Business Utilization for
41 the appropriate Federal agencies, who shall further distribute

1 the capability statements to contracting activities with Fed-
2 eral agencies that may purchase the types of items or services
3 described in the capability statements.

4 (2) CONTACT BY CONTRACTING ACTIVITIES.—A contracting activity
5 that receives a capability statement of a program participant under
6 paragraph (1)(D) shall, within 60 days after receipt of the capability
7 statement, contact the business opportunity specialist identified in the
8 capability statement to indicate the number, type, and approximate dol-
9 lar value of contract opportunities that the contracting activity may
10 award over the succeeding 12-month period and that may be appro-
11 priate to consider for award to program participants for which the con-
12 tracting activity has received capability statements.

13 (3) FORECAST OF CONTRACT OPPORTUNITIES.—

14 (A) IN GENERAL.—An executive agency that reports to the Fed-
15 eral Procurement Data System contract actions with an aggregate
16 value in excess of \$50,000,000 in any fiscal year shall—

17 (i) prepare a forecast of expected contract opportunities or
18 classes of contract opportunities for the next and succeeding
19 fiscal years that program participants are capable of perform-
20 ing; and

21 (ii) periodically revise the forecast during the following
22 year.

23 (B) CONTENTS.—To the extent that the information is avail-
24 able, a forecast under subparagraph (A) shall specify—

25 (i) the approximate number of individual contract opportu-
26 nities (and the number of opportunities within a class);

27 (ii) the approximate dollar value, or range of dollar values,
28 for each contract opportunity or class of contract opportuni-
29 ties;

30 (iii) the anticipated time (by fiscal year quarter) for the is-
31 suanance of a procurement request; and

32 (iv) the activity responsible for the award and administra-
33 tion of the contract.

34 (C) SUBMISSION OF FORECASTS.—Not later than 10 days after
35 completion of a forecast under subparagraph (A), the head of the
36 executive agency that prepared the forecast shall submit the fore-
37 cast to—

38 (i) the Director of the Office of Small and Disadvantaged
39 Business Utilization of the executive agency; and

40 (ii) the Administrator.

1 (D) SCOPE OF INFORMATION REPORTED.—A forecast submitted
2 under subparagraph (C) may be limited to classes of items and
3 services for which there are substantial annual purchases.

4 (E) AVAILABILITY OF FORECASTS.—A forecast submitted under
5 subparagraph (C) shall be available to small business concerns.

6 **§ 233113. Limitations on subcontracting**

7 A program participant shall not be awarded a contract under the program
8 unless the program participant agrees to satisfy the requirements of section
9 299107 of this title.

10 **§ 233114. Wholesalers and retailers**

11 (a) IN GENERAL.—An otherwise responsible small business concern that
12 is described in subsection (b) shall not be denied the opportunity to submit
13 and have considered its offer for a procurement contract for the supply of
14 a product to be let under the program solely because the small business con-
15 cern is other than the manufacturer or processor of the product to be sup-
16 plied under the contract.

17 (b) REQUIREMENTS.—A small business concern referred to in subsection
18 (a) is a small business concern that—

19 (1) is primarily engaged in wholesale or retail trade;

20 (2) is a small business concern under the numerical size standard
21 for the North American Industry Classification System code assigned
22 to the contract solicitation on which the offer is being made;

23 (3) is a regular dealer (as defined under section 6510 of title 41)
24 in the product to be offered the Government; and

25 (4) represents that the small business concern will supply the prod-
26 uct of a domestic small business manufacturer or processor, unless a
27 waiver of this paragraph is granted—

28 (A) by the Administrator, after reviewing a determination by
29 the contracting officer that no small business manufacturer or
30 processor can reasonably be expected to offer a product meeting
31 the specifications (including period for performance) required of
32 an offeror by the solicitation; or

33 (B) by the Administrator for a product (or class of products),
34 after determining that no small business manufacturer or proc-
35 essor is available to participate in the Federal procurement mar-
36 ket.

37 **§ 233115. Reporting by program participants to business op-
38 portunity specialists**

39 (a) IN GENERAL.—A program participant shall semiannually submit to
40 its assigned business opportunity specialist a report identifying each agent,
41 representative, attorney, accountant, consultant, or other person (other than

1 an employee of the program participant) that received compensation during
2 the reporting period to assist the program participant in obtaining a Fed-
3 eral contract.

4 (b) CONTENTS.—A report under subsection (a) shall—

5 (1) disclose the amount of compensation received by each person
6 identified in the report during the reporting period; and

7 (2) describe the activities performed for the compensation.

8 (c) REVIEW AND TRANSMITTAL.—The business opportunity specialist
9 shall promptly—

10 (1) review the report; and

11 (2) transmit the report to the Associate Administrator.

12 (d) SUSPICION OF IMPROPER ACTIVITY.—The Associate Administrator
13 shall transmit to the Inspector General of SBA any report that raises a sus-
14 picion of improper activity.

15 (e) FAILURE TO SUBMIT REPORT.—A failure of a program participant
16 to submit a report under subsection (a) shall constitute good cause for initi-
17 ation of a termination proceeding under section 233121(b) of this title.

18 **§ 233116. Transfer of ownership or control**

19 (a) IN GENERAL.—

20 (1) PERFORMANCE BY CONTRACT AWARDEE.—A contract (including
21 options) awarded under the program shall be performed by the pro-
22 gram participant that is initially awarded the contract.

23 (2) RELINQUISHMENT OF OWNERSHIP OR CONTROL.—

24 (A) IN GENERAL.—Notwithstanding paragraph (1), if the owner
25 or owners on whom eligibility for award of the contract was based
26 relinquish ownership or control of the program participant, or
27 enter into any agreement to relinquish such ownership or control,
28 the contract or option shall be terminated for the convenience of
29 the Government.

30 (B) NO DAMAGES.—No repurchase costs or other damages may
31 be assessed against a program participant due solely to the oper-
32 ation of subparagraph (A).

33 (b) WAIVER.—

34 (1) IN GENERAL.—The Administrator may waive subsection (a) only
35 if—

36 (A)(i) it is necessary for the owner of the program participant
37 to surrender partial control of the program participant on a tem-
38 porary basis to obtain equity financing; and

39 (ii) the Administrator is requested to waive subsection (a) prior
40 to the actual transfer of ownership or control;

1 (B)(i) the procuring agency head certifies that termination of
2 the contract would severely impair attainment of the procuring
3 agency's program objectives or missions; and

4 (ii) the Administrator is requested to waive subsection (a) prior
5 to the actual transfer of ownership or control;

6 (C)(i) ownership and control of the program participant will
7 pass to another program participant; and

8 (ii) the acquiring program participant would otherwise be eligi-
9 ble to receive the award directly under the program; and

10 (iii) the Administrator is requested to waive subsection (a) prior
11 to the actual transfer of ownership or control;

12 (D)(i) due to incapacity or death, none of 1 or more individuals
13 on whom eligibility was based is able to continue to exercise con-
14 trol of the program participant; and

15 (ii) the Administrator is requested to waive subsection (a) as
16 soon as possible after the incapacity or death occurs; or

17 (E)(i) to raise equity capital, it is necessary for the disadvan-
18 taged owner of the program participant to transfer ownership of
19 a majority of the voting stock of the program participant;

20 (ii) the program participant has exited the program;

21 (iii) the disadvantaged owner will maintain ownership of the
22 largest single outstanding block of voting stock (including stock
23 held by affiliated persons); and

24 (iv) the disadvantaged owner will maintain control of daily busi-
25 ness operations of the program participant.

26 (2) NONDELEGABILITY.—The authority of the Administrator under
27 paragraph (1) may not be delegated.

28 (e) NOTIFICATION OF AGREEMENT TO TRANSFER.—The owner of a pro-
29 gram participant that is performing a contract awarded under the program
30 shall notify the Administrator immediately on entering into an oral or writ-
31 ten agreement to transfer all or part of the stock or other ownership inter-
32 est in the program participant to any other person.

33 (d) TREATMENT OF CERTAIN POTENTIAL OWNERSHIP INTERESTS.—Not-
34 withstanding any other provision of law, for the purposes of determining
35 ownership and control of a program participant, any potential ownership in-
36 terest held by an investment company licensed under subtitle III shall be
37 treated in the same manner as an interest held by the individuals on whom
38 eligibility is based.

39 (e) CONTINUED ELIGIBILITY.—A program participant shall remain eligi-
40 ble for contracts under the program if there is a transfer of ownership and
41 control to individuals whom the Administrator determines to be socially and

1 economically disadvantaged. In the event of such a transfer, the transferee
2 program participant, if not terminated or graduated, shall be eligible for a
3 period of continued participation in the program for the remainder of the
4 program participation period of the transferor.

5 **§ 233117. Assistance for program participants**

6 (a) IN GENERAL.—The Administrator shall—

7 (1) assist program participants in developing and maintaining com-
8 prehensive business plans that specify the program participant's spe-
9 cific business targets, objectives, and goals developed and maintained
10 in conformity with section 233118 of this title;

11 (2) provide for such other nonfinancial services as the Administrator
12 considers necessary for the establishment, preservation, and growth of
13 program participants;

14 (3) assist program participants in obtaining equity and debt financ-
15 ing;

16 (4) establish regular performance monitoring and reporting systems
17 for program participants to ensure compliance with their business
18 plans;

19 (5) analyze and report the causes of success and failure of program
20 participants; and

21 (6) provide assistance necessary to help program participants pro-
22 cure surety bonds.

23 (b) NONFINANCIAL SERVICES.—Nonfinancial services provided under
24 subsection (a)(2) may include—

25 (1) loan packaging;

26 (2) financial counseling;

27 (3) accounting and bookkeeping assistance;

28 (4) marketing assistance; and

29 (5) management assistance.

30 (c) SURETY BONDS.—Assistance provided under subsection (a)(6) may
31 include—

32 (1) assistance in the preparation of application forms required to re-
33 ceive a surety bond;

34 (2) special management and technical assistance designed to meet
35 the specific needs of program participants that have received or are ap-
36 plying for a surety bond; and

37 (3) preparation of all forms necessary to receive a surety bond guar-
38 antee under chapter 321.

39 (d) OUTREACH PROGRAM.—

1 (1) IN GENERAL.—The Administrator shall develop and implement
2 an outreach program to inform and recruit small business concerns to
3 apply for eligibility for assistance under the program.

4 (2) ACTIVITIES.—The outreach program shall make a sustained and
5 substantial effort to solicit applications for certification from—

6 (A) small business concerns located in areas of concentrated un-
7 employment or underemployment or within labor surplus areas
8 and within States having relatively few program participants; and

9 (B) small disadvantaged business concerns in industry cat-
10 egories that have not substantially participated in the award of
11 contracts under the program.

12 **§ 233118. Business plans**

13 (a) SUBMISSION.—Promptly after certification under section 233125 of
14 this title, a program participant shall submit a business plan for review by
15 the business opportunity specialist assigned to assist the program partici-
16 pant. The business opportunity specialist shall have a Level I Federal Ac-
17 quisition Certification in Contracting (or any successor certification) or the
18 equivalent Department of Defense certification, except that a business op-
19 portunity specialist serving on January 2, 2013, may continue to serve as
20 a business opportunity specialist without such a certification until January
21 2, 2018.

22 (b) FORM; OBJECTIVE.—A business plan—

23 (1) may be a revision of a preliminary business plan submitted by
24 the program participant or required by the Administrator as a part of
25 the application for certification under the program; and

26 (2) shall be designed to result in the elimination by the program par-
27 ticipant of the conditions or circumstances on which the Administrator
28 determined eligibility under paragraph (8) or (16) of section 231101
29 of this title.

30 (c) APPROVAL OF BUSINESS PLAN AS CONDITION ON CONTRACT
31 AWARD.—Prior approval of a business plan by the business opportunity spe-
32 cialist, and of subsequent modifications submitted under subsection (e),
33 shall be a condition on the eligibility of a program participant for award
34 of a contract under the program.

35 (d) CONTENTS.—A business plan shall include—

36 (1) an analysis of market potential, competitive environment, and
37 other business analyses estimating the program participant's prospects
38 for profitable operations during the term of program participation and
39 after graduation;

40 (2) an analysis of the program participant's strengths and weak-
41 nesses, with particular attention to correcting any financial, manage-

1 rial, technical, or personnel conditions that are likely to impede the pro-
2 gram participant in receiving contracts other than contracts awarded
3 under the program;

4 (3) specific targets, objectives, and goals for the business develop-
5 ment of the program participant during the next and succeeding years
6 using the results of the analyses conducted under paragraphs (1) and
7 (2);

8 (4) a transition management plan outlining specific steps to ensure
9 profitable business operations after graduation (to be incorporated into
10 the program participant's plan during the 1st year of the transitional
11 stage of program participation); and

12 (5) estimates of contract awards under the program and from other
13 sources that the program participant will require to meet the specific
14 targets, objectives, and goals for the years covered by the business
15 plan, which estimates shall be consistent with section 233128 of this
16 title and other applicable provisions of this chapter.

17 (e) ANNUAL REVIEW.—

18 (1) IN GENERAL.—A program participant shall annually review its
19 currently approved business plan with its business opportunity special-
20 ist and modify the business plan as appropriate.

21 (2) APPROVAL.—

22 (A) SUBMISSION.—A modified business plan shall be submitted
23 to the Administrator for approval.

24 (B) CONTINUED VALIDITY OF CURRENT PLAN.—The currently
25 approved business plan shall be valid until such time as a modified
26 business plan is approved by the business opportunity specialist.

27 (3) TRANSITIONAL STAGE.—Annual reviews pertaining to years in
28 the transitional stage of program participation shall require, as appro-
29 priate, a written verification that the program participant has complied
30 with the requirements of section 233128 of this title relating to attain-
31 ing business activity from sources other than contracts awarded under
32 the program.

33 (f) ANNUAL NEEDS FORECAST.—

34 (1) IN GENERAL.—During the review of its plan conducted under
35 subsection (e), a program participant shall annually forecast its needs
36 for contract awards under the program for the next program year and
37 the succeeding program year.

38 (2) INCLUSION IN BUSINESS PLAN.—An annual needs forecast shall
39 be included in a program participant's business plan.

40 (3) CONTENTS.—An annual needs forecast shall include—

1 (A) the aggregate dollar value of contract support to be sought
2 on a noncompetitive basis under the program, reflecting compli-
3 ance with the requirements of section 233128 of this title relating
4 to attaining business activity from sources other than contracts
5 awarded under the program;

6 (B) the types of contract opportunities being sought, identified
7 by North American Industry Classification System code or other-
8 wise;

9 (C) an estimate of the dollar value of contract support to be
10 sought on a competitive basis; and

11 (D) such other information the business opportunity specialist
12 may request to provide effective business development assistance
13 to the program participant.

14 (g) LOGICAL BUSINESS PROGRESSION.—Limitations established by the
15 Administrator restricting the award of contracts under the program to a
16 limited number of North American Industry Classification System codes in
17 an approved business plan shall not be applied in a manner that inhibits
18 the logical business progression by a program participant into areas of in-
19 dustrial endeavor in which the program participant has potential for suc-
20 cess.

21 **§ 233119. Denial of further assistance**

22 (a) IN GENERAL.—A program participant shall be denied any assistance
23 under the program if the program participant—

- 24 (1) voluntarily elects not to continue participation;
25 (2) completes its program participation period;
26 (3) is graduated; or
27 (4) is terminated.

28 (b) NO SUBSEQUENT RECERTIFICATION.—If participation in the program
29 by a program participant is concluded for any of the reasons described in
30 subsection (a), the former program participant shall not subsequently be re-
31 certified for participation in the program.

32 **§ 233120. Graduation**

33 A program participant shall be graduated from the program—

34 (1) when a program participant successfully completes the program
35 by substantially achieving the targets, objectives, and goals contained
36 in the program participant's business plan, thereby demonstrating the
37 ability of the program participant to compete in the marketplace with-
38 out assistance under the program; or

39 (2) if, in a review of economic disadvantage under section 233110(a)
40 of this title, the Administrator determines that the program participant

1 and its disadvantaged owners are no longer economically disadvan-
2 tagged.

3 **§ 233121. Termination**

4 (a) BASIS FOR TERMINATION.—

5 (1) IN GENERAL.—Termination from the program shall be based on
6 good cause.

7 (2) GOOD CAUSE.—For purposes of paragraph (1), good cause in-
8 cludes—

9 (A) the failure of a program participant to maintain eligibility
10 for program participation;

11 (B) the failure of a program participant to engage in business
12 practices that will promote its competitiveness within a reasonable
13 period of time as evidenced by, among other indicators, a pattern
14 of unjustified delinquent performance or terminations for default
15 with respect to contracts awarded under the program;

16 (C) a demonstrated pattern of failing to make required submis-
17 sions or responses to the Administrator in a timely manner;

18 (D) the willful violation of any regulation of the Administrator
19 pertaining to a material issue;

20 (E) the debarment of a program participant or its disadvan-
21 tagged owners by any agency under subpart 9.4 of title 48, Code
22 of Federal Regulations (or any successor regulation); and

23 (F) the conviction of the disadvantaged owner or an officer of
24 a program participant for an offense indicating a lack of business
25 integrity (including a conviction for embezzlement, theft, forgery,
26 bribery, falsification, or violation of chapter 105).

27 (3) TERMINATION FOR CONVICTION.—For purposes of paragraph
28 (2)(F), a termination action shall not be taken with respect to a dis-
29 advantaged owner of a program participant solely because of the con-
30 viction of an officer of the program participant (who is not a disadvan-
31 tagged owner) unless the disadvantaged owner conspired with, abetted,
32 or otherwise knowingly acquiesced in the activity or omission that was
33 the basis of the officer's conviction.

34 (b) PROCEDURE.—

35 (1) INITIATION OF PROCEEDING.—The Director may initiate a termi-
36 nation proceeding by recommending a termination proceeding to the
37 Associate Administrator.

38 (2) NOTICE OF INTENT TO TERMINATE.—If the Associate Adminis-
39 trator determines that termination is appropriate, the Associate Admin-
40 istrator shall, not later than 15 days after making the determination,

1 provide the program participant written notice of intent to terminate,
2 specifying the reasons for the termination.

3 **§ 233122. Evaluation of eligibility**

4 (a) IN GENERAL.—The Administrator shall conduct an evaluation of a
5 program participant's eligibility for continued participation in the program
6 whenever the Administrator receives specific and credible information alleg-
7 ing that the program participant no longer meets the requirements for pro-
8 gram eligibility.

9 (b) TERMINATION PROCEEDING.—On making a finding that a program
10 participant is no longer eligible, the Administrator shall initiate a termi-
11 nation proceeding under section 233121 of this title.

12 (c) SUSPENSION.—A program participant's eligibility for award of a con-
13 tract under the program may be suspended under subpart 9.4 of title 48,
14 Code of Federal Regulations (or any successor regulation).

15 **§ 233123. Limitation of eligibility to 1 small business con-**
16 **cern**

17 (a) DETERMINATION OF SOCIAL AND ECONOMIC DISADVANTAGE.—Ex-
18 cept as provided in subsection (c), an individual who was determined to be
19 socially and economically disadvantaged before August 15, 1989, shall not
20 be permitted to assert such disadvantage with respect to any other concern
21 making application for certification as a small business concern owned and
22 controlled by socially and economically disadvantaged individuals.

23 (b) ELIGIBILITY AS A SOCIALLY AND ECONOMICALLY DISADVANTAGED
24 SMALL BUSINESS CONCERN.—Except as provided in subsection (c), an indi-
25 vidual on whom eligibility as a small business concern owned and controlled
26 by socially and economically disadvantaged individuals is based under sec-
27 tion 231101(15) of this title shall be permitted to assert such eligibility for
28 only 1 small business concern.

29 (c) EXCEPTION.—An economically disadvantaged Indian tribe may own
30 more than 1 small business concern eligible for assistance under the pro-
31 gram if—

32 (1) the Indian tribe does not own another concern in the same indus-
33 try that has been determined to be eligible to receive contracts under
34 the program; and

35 (2) the individuals responsible for the management and daily oper-
36 ations of the concern do not manage more than 2 program partici-
37 pants.

1 **§ 233124. Limitation on denial of admission into program**
2 **based on unavailability of specific contract oppor-**
3 **tunities**

4 An applicant shall not be denied admission into the program based solely
5 on a determination that specific contract opportunities are unavailable to as-
6 sist in the development of the applicant unless—

7 (1) the Government has not previously procured and is unlikely to
8 procure the types of products or services offered by the applicant; or

9 (2) the purchases of such products or services by the Government
10 will not be in quantities sufficient to support the developmental needs
11 of the applicant and other program participants providing the same or
12 similar products or services.

13 **§ 233125. Certification decision**

14 Not later than 90 days after receipt of a completed application for pro-
15 gram certification, the Associate Administrator shall—

16 (1) certify a small business concern as a program participant; or

17 (2) deny the application.

18 **§ 233126. Review of new entrants into the program**

19 (a) REVIEW.—Thirty days before the conclusion of each fiscal year, the
20 Director shall review all small business concerns that have been admitted
21 into the program during the preceding 12-month period.

22 (b) DETERMINATION AND ESTIMATE.—In a review under subsection (a),
23 the Director shall—

24 (1) determine the number of entrants and their geographic distribu-
25 tion and industrial classification; and

26 (2) estimate—

27 (A) the expected growth of the program during the next fiscal
28 year; and

29 (B) the number of additional business opportunity specialists, if
30 any, that will be needed to meet the anticipated demand for the
31 program.

32 (c) REPORT.—Not later than September 30 of each year, the Director
33 shall report to the Associate Administrator the determination and estimates
34 made under subsection (b).

35 (d) DIRECTIVES.—

36 (1) IN GENERAL.—Based on the report under subsection (c) and
37 such additional data as are relevant, the Associate Administrator shall,
38 not later than October 31 of each fiscal year, issue policy and program
39 directives applicable to the fiscal year that—

40 (A) establish priorities for the solicitation of program applica-
41 tions from underrepresented regions and industry categories;

1 (B) assign staffing levels and allocate other program resources
2 as necessary to meet program needs; and

3 (C) establish priorities in the processing and admission of new
4 program participants as necessary to achieve an equitable geo-
5 graphic distribution of small business concerns and a distribution
6 of concerns across all industry categories in proportions needed to
7 increase significantly contract awards to small business concerns
8 owned and controlled by socially and economically disadvantaged
9 individuals.

10 (2) CONSIDERATIONS.—In considering an increase described in para-
11 graph (1)(C), the Associate Administrator shall give due consideration
12 to industrial categories in which Federal purchases have been substan-
13 tial but in which the participation rate of small business concerns
14 owned and controlled by socially and economically disadvantaged indi-
15 viduals has been limited.

16 **§ 233127. Program stages**

17 (a) IN GENERAL.—The Administrator shall segment a program partici-
18 pant’s participation in the program into a developmental stage and a transi-
19 tional stage.

20 (b) DEVELOPMENTAL STAGE.—The developmental stage of program par-
21 ticipation shall be designed to assist a program participant in its effort to
22 overcome its economic disadvantage by providing such assistance as is nec-
23 essary and appropriate to access markets and strengthen its financial and
24 managerial skills.

25 (c) TRANSITIONAL STAGE.—The transitional stage of program participa-
26 tion shall be designed to overcome, insofar as practicable, the remaining ele-
27 ments of economic disadvantage and to prepare a program participant for
28 graduation from the program.

29 (d) AVAILABLE ASSISTANCE.—

30 (1) IN GENERAL.—A program participant, if otherwise eligible, shall
31 be qualified to receive assistance as provided in this subsection.

32 (2) CONTRACT SUPPORT.—A program participant in the develop-
33 mental stage or transitional stage shall be qualified to receive contract
34 support under the program.

35 (3) FINANCIAL ASSISTANCE.—A program participant in the develop-
36 mental stage or transitional stage shall be qualified to receive financial
37 assistance under section 205111 of this title.

38 (4) EMPLOYEE SKILLS TRAINING OR UPGRADING.—

39 (A) DEFINITION OF TRAINING PROVIDER.—In this paragraph,
40 the term “training provider” means an institution of higher edu-
41 cation, a community or vocational college, or an institution eligible

1 to provide skills training or upgrading under title I of the Work-
2 force Investment Act of 1998 (29 U.S.C. 2801 et seq.).

3 (B) IN GENERAL.—A program participant in the developmental
4 stage shall be qualified to receive financial assistance under which
5 the Administrator may, without regard to section 103201(l) of this
6 title, purchase in whole or in part, on behalf of the program par-
7 ticipant, skills training or upgrading for employees or potential
8 employees of the program participant.

9 (C) FORM OF ASSISTANCE.—Financial assistance under sub-
10 paragraph (B) may be made—

- 11 (i) by direct payment to the training provider; or
12 (ii) by reimbursing the program participant or the program
13 participant's employee, if the Administrator considers reim-
14 bursement to be reasonable and appropriate.

15 (D) LIMITATION.—Financial assistance under subparagraph (B)
16 shall not be granted to a program participant unless the program
17 participant first documents that the program participant has ex-
18 plored the use of existing cost-free or cost-subsidized training pro-
19 grams offered by public and private sector agencies working with
20 programs of employment and training and economic development.

21 (E) NUMBER OF EMPLOYEES.—Not more than 5 employees or
22 potential employees of the program participant shall receive skills
23 training or upgrading under subparagraph (B) at any 1 time.

24 (F) AMOUNT.—Not more than \$2,500 shall be made available
25 for any 1 employee or potential employee for skills training or up-
26 grading under subparagraph (B).

27 (G) LENGTH OF TRAINING OR UPGRADING.—The length of
28 training or upgrading financed under subparagraph (B) shall be
29 not less than 1 nor more than 6 months.

30 (H) LENGTH OF EMPLOYMENT.—

31 (i) ASSURANCES.—Financial assistance under subpara-
32 graph (B) shall not be granted to a program participant un-
33 less—

34 (I) the program participant has given adequate assur-
35 ance that it will employ the trainee or upgraded em-
36 ployee for a period of at least 6 months after the train-
37 ing or upgrading financed under subparagraph (B) has
38 been completed; and

39 (II) each trainee or upgraded employee has given a
40 similar assurance to remain within the employ of the
41 program participant for that period.

1 (ii) BREACH.—If a program participant, trainee, or up-
2 graded employee fails to fulfill the assurance under clause
3 (i)—

4 (I) the Administrator shall be entitled to, and shall
5 make diligent efforts to obtain from the violating pro-
6 gram participant, trainee, or upgraded employee, the re-
7 payment of all funds expended on behalf of the program
8 participant, trainee, or upgraded employee;

9 (II) such repayment shall be made to the Adminis-
10 trator with such interest and costs of collection as are
11 reasonable; and

12 (III) the program participant, trainee, or upgraded
13 employee shall be barred from receiving any further as-
14 sistance under subparagraph (B).

15 (I) LOCATION.—Training or upgrading financed under subpara-
16 graph (B) may take place at a facility of the program participant
17 or of the training provider.

18 (J) RECORDS.—A program participant that receives assistance
19 under subparagraph (B) shall maintain such records as the Ad-
20 ministrator considers appropriate to ensure that this subsection
21 and any other applicable law have not been violated.

22 (K) REGULATIONS.—The Administrator shall, in consultation
23 with the Secretary of Labor, promulgate regulations to implement
24 this paragraph that establish acceptable training and upgrading
25 performance standards and provide for such monitoring or audit
26 requirements as are necessary to ensure the integrity of the train-
27 ing effort.

28 (5) TECHNOLOGY AND SURPLUS PROPERTY TRANSFER.—

29 (A) IN GENERAL.—A program participant in the developmental
30 stage or transitional stage shall be qualified to receive the transfer
31 of technology or surplus property owned by the United States.

32 (B) EFFECTUATION.—Activities designed to effect transfers
33 under subparagraph (A)—

34 (i) shall be developed in cooperation with the heads of Fed-
35 eral agencies; and

36 (ii) shall include the transfer by grant, license, or sale of
37 technology or property to program participants.

38 (C) PRIORITY.—Property under subparagraph (A) may be
39 transferred to program participants on a priority basis.

40 (D) USE.—Technology or property transferred under subpara-
41 graph (A)—

1 (i) shall be used by a program participant during the normal
2 conduct of its business operation; and

3 (ii) shall not be sold or transferred to any other person
4 (other than the Government) until 1 year after the program
5 participant's term of participation.

6 (6) TRAINING IN THE DEVELOPMENT OF BUSINESS PRINCIPLES AND
7 STRATEGIES.—A program participant in the developmental stage or
8 transitional stage shall be qualified to receive training assistance under
9 which the Administrator shall conduct training sessions to assist pro-
10 gram participants in the development of business principles and strate-
11 gies to enhance their ability to compete successfully for contracts in the
12 marketplace.

13 (7) PARTICIPATION IN JOINT VENTURES, LEADER-FOLLOWER AR-
14 RANGEMENTS, AND TEAMING AGREEMENTS.—

15 (A) IN GENERAL.—A program participant in the transitional
16 stage shall be qualified to participate in joint ventures, leader-fol-
17 lower arrangements, and teaming agreements between the pro-
18 gram participant and other program participants and other busi-
19 ness concerns with respect to contracting opportunities for the re-
20 search, development, full-scale engineering, or production of major
21 systems.

22 (B) AGENCY PROGRAMS.—Activities under subparagraph (A)
23 shall be undertaken on the basis of programs developed by the
24 Federal agency responsible for the procurement of the major sys-
25 tem, with the assistance of the Administrator.

26 (8) BUSINESS PLANNING TRAINING AND TECHNICAL ASSISTANCE.—
27 A program participant in the transitional stage shall be qualified to re-
28 ceive transitional management business planning training and technical
29 assistance.

30 **§ 233128. Attainment of business activity targets**

31 (a) DEVELOPMENTAL STAGE.—During the developmental stage of partici-
32 pation in the program, a program participant shall take all reasonable ef-
33 forts within its control to attain the business activity targets contained in
34 its business plan. Those efforts shall be made a part of the business plan
35 and shall be sufficient in scope and duration to satisfy the Administrator
36 that the program participant will engage a reasonable marketing strategy
37 that will maximize its potential to attain its business activity targets.

38 (b) TRANSITIONAL STAGE.—

39 (1) IN GENERAL.—During the transitional stage of participation in
40 the program, a program participant shall be subject to regulations re-

1 garding business activity targets that are promulgated by the Adminis-
2 trator.

3 (2) ESTABLISHMENT OF BUSINESS ACTIVITY TARGETS.—The regula-
4 tions under paragraph (1) shall establish business activity targets ap-
5 plicable to program participants during the 5th year and each succeed-
6 ing year of program participation. The business activity targets, for
7 that period of time, shall reflect a reasonably consistent increase in
8 contracts awarded other than under the program, expressed as a per-
9 centage of total sales.

10 (3) ATTAINMENT.—The regulations under paragraph (1) shall re-
11 quire a program participant to attain its business activity targets.

12 (4) CERTIFICATION OF COMPLIANCE.—The regulations under para-
13 graph (1) shall provide that, before the receipt of any contract to be
14 awarded under the program, the program participant (if it is in the
15 transitional stage) shall certify that it—

16 (A) has complied with the regulations; or

17 (B) is in compliance with such remedial measures as have been
18 ordered under regulations promulgated under paragraph (6).

19 (5) PERFORMANCE REVIEW.—The regulations under paragraph (1)
20 shall require the Administrator to review a program participant's per-
21 formance regarding attainment of business activity targets during peri-
22 odic reviews of the program participant's business plan.

23 (6) REMEDIAL MEASURES.—

24 (A) IN GENERAL.—The regulations under paragraph (1) shall
25 authorize the Administrator to take appropriate remedial measures
26 with respect to a program participant that fails to attain a re-
27 quired business activity target for the purpose of reducing the pro-
28 gram participant's dependence on contracts awarded under the
29 program.

30 (B) MEASURES.—Remedial measures may include—

31 (i) assisting the program participant in expanding the dol-
32 lar volume of its competitive business activity; and

33 (ii) limiting the dollar volume of contracts awarded to the
34 program participant under the program.

35 (C) NONREVIEWABILITY.—Except for a remedial measure that
36 would constitute a termination, a remedial measure taken under
37 this paragraph shall not be reviewable under section 233111 of
38 this title.

1 **§ 233129. Program participation period**

2 A program participant may receive assistance under the program for a
3 total period of not longer than 9 years, measured from the date of its cer-
4 tification under section 233125 of this title, of which—

5 (1) not more than 4 years may be spent in the developmental stage
6 of program participation; and

7 (2) not more than 5 years may be spent in the transitional stage of
8 program participation.

9 **§ 233130. Collection of data on program operations**

10 The Administrator shall develop and implement a process for the system-
11 atic collection of data on the operations of the program.

12 **§ 233131. Approval of contract options and modifications**

13 The Administrator shall make substantial and sustained efforts to achieve
14 a maximum 10-day period as the average processing time for approving op-
15 tions and modifications to contracts awarded under the program and sub-
16 mitted to the Administrator for approval.

17 **§ 233132. Orderly and efficient management of program**

18 The Administrator shall, to the maximum extent practicable, minimize
19 delay, eliminate excess regulation, and require only such paperwork as is
20 necessary to effect the orderly and efficient management of the program
21 and the award of contracts under the program.

22 **§ 233133. Participation in federally funded programs and**
23 **projects**

24 (a) IN GENERAL.—A small business concern that is certified, or otherwise
25 meets the criteria for participation in any program under the program, shall
26 not be required by any State or political subdivision of a State to meet addi-
27 tional criteria or certification, unrelated to the capability to provide the re-
28 quested product or service, to participate as a small business concern owned
29 and controlled by socially and economically disadvantaged individuals in any
30 program or project that is funded, in whole or in part, by the Federal Gov-
31 ernment.

32 (b) NOTICE OF PARTICIPATION BY THE SECRETARY OF TRANSPOR-
33 TATION.—The Secretary of Transportation shall notify each State or politi-
34 cal subdivision of a State to which the Secretary of Transportation awards
35 a grant or other Federal funds of the criteria for participation by a small
36 business concern owned and controlled by socially and economically dis-
37 advantaged individuals in any program or project that is funded, in whole
38 or in part, by the Federal Government.

39 **Chapter 235—Technical and Management**
40 **Assistance**

235101. Financial assistance for projects providing technical or management assistance.

235102. Eligible projects.

235103. Location of service.

1 **§ 235101. Financial assistance for projects providing technical or management assistance**
2

3 (a) IN GENERAL.—The Administrator shall provide financial assistance to
4 public or private organizations to pay all or part of the cost of projects de-
5 signed to provide technical or management assistance to program partici-
6 pants, with special attention to small business concerns located in areas
7 with high proportions of unemployed or low-income individuals.

8 (b) FORM OF ASSISTANCE.—The financial assistance authorized for
9 projects under this chapter includes assistance advanced by grant, agree-
10 ment, or contract.

11 (c) PAYMENT.—The Administrator may make payments under a grant or
12 contract under this chapter in lump sum or installments, and in advance
13 or by way of reimbursement, and in the case of grants, with necessary ad-
14 justments on account of overpayments or underpayments.

15 **§ 235102. Eligible projects**

16 (a) IN GENERAL.—Financial assistance under this chapter may be pro-
17 vided for projects, including projects for—

18 (1) planning and research, including feasibility studies and market
19 research;

20 (2) the identification and development of new business opportunities;

21 (3) the furnishing of centralized services with regard to public serv-
22 ices and Federal Government programs including the programs author-
23 ized under this division and section 205111 of this title;

24 (4) the establishment and strengthening of business service agencies,
25 including trade associations and cooperatives; and

26 (5) the furnishing of business counseling, management training, and
27 legal and other related services, with special emphasis on the develop-
28 ment of management training programs using the resources of the
29 business community (including the development of management train-
30 ing opportunities in existing business) and with emphasis in all cases
31 on providing management training of sufficient scope and duration to
32 develop entrepreneurial and managerial self-sufficiency on the part of
33 the individuals served.

34 (b) PREFERENCE.—The Administrator shall give preference to projects
35 that promote the ownership, participation in ownership, or management of
36 small business concerns owned by program participants.

37 **§ 235103. Location of service**

38 To the extent feasible, service under this chapter shall be provided in a
39 location that is easily accessible to the program participants served.

1 **Division G—Procurement Assistance**
2 **Chapter 241—General Provisions**

Sec.

- 241101. Definition of executive agency.
- 241102. Authority.
- 241103. Technical, managerial, and informational aids.
- 241104. Inventory of productive facilities.
- 241105. Utilization of productive capacity.
- 241106. Subcontracting to small business concerns.
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- 241109. Information pertaining to Federal procurement or production.
- 241110. Information pertaining to disposal of Federal property.
- 241111. Information pertaining to supplies of materials.
- 241112. Fair proportions of business for small business concerns.
- 241113. Fair and reasonable treatment of small business concerns.
- 241114. Information and assistance pertaining to federally aided urban renewal projects.
- 241115. Dissemination of information by the Administrator.
- 241116. Availability of information from Federal agencies.
- 241117. Adjustment of regulations and programs to the needs of small business concerns.
- 241118. Outreach programs for disabled veterans, veterans, and reservists.
- 241119. Consolidation of contract requirements.

3 **§ 241101. Definition of executive agency**

4 In this division, the term "executive agency" has the meaning given the
5 term in section 133 of title 41.

6 **§ 241102. Authority**

7 The Administrator shall take an action under this chapter when the Ad-
8 ministrator determines that the action is necessary.

9 **§ 241103. Technical, managerial, and informational aids**

10 (a) IN GENERAL.—

11 (1) ACTIVITIES.—The Administrator shall provide technical, manage-
12 rial, and informational aids to small business concerns—

13 (A) by advising and counseling on matters in connection with
14 Government procurement and policies, principles, and practices of
15 good management;

16 (B) by cooperating and advising with—

17 (i) voluntary business, professional, educational, and other
18 nonprofit organizations, associations, and institutions; and

19 (ii) other Federal and State agencies;

20 (C) by maintaining a clearinghouse for information on manag-
21 ing, financing, and operating small business concerns; and

22 (D) by disseminating such information, including through rec-
23 ognition events, and by other activities that the Administrator de-
24 termines to be appropriate.

25 (2) NO ENDORSEMENT; APPROPRIATE RECOGNITION.—In cooperat-
26 ing and advising with an entity under paragraph (1)(B)(i), the Admin-
27 istrator shall take such actions as the Administrator determines to be
28 necessary to ensure that—

1 (A) the cooperation does not constitute or imply an endorsement
2 by the Administrator of the entity or its products or services; and

3 (B) SBA receives appropriate recognition in all printed mate-
4 rial.

5 (3) FOR-PROFIT CONCERNS.—The Administrator may provide tech-
6 nical, managerial, and informational aids to small business concerns
7 through cooperation with a for-profit concern (referred to in this para-
8 graph as a “cosponsor”) if the Administrator—

9 (A) takes such action as the Administrator determines to be ap-
10 propriate to ensure that—

11 (i) SBA receives appropriate recognition and publicity;

12 (ii) the cooperation does not constitute or imply an en-
13 dorsement by the Administrator of any product or service of
14 the cosponsor;

15 (iii) unnecessary promotion of the products or services of
16 the cosponsor is avoided; and

17 (iv) the use of any 1 cosponsor in a marketing area is mini-
18 mized; and

19 (B) develops an agreement, executed on behalf of the Adminis-
20 trator by an employee of SBA in Washington, the District of Co-
21 lumbia, that, at a minimum—

22 (i) specifies the terms and conditions of the cooperation;
23 and

24 (ii) provides that—

25 (I) any printed material to announce the cosponsor-
26 ship or to be distributed at the cosponsored activity shall
27 be approved in advance by the Administrator;

28 (II) only minimal charges may be imposed on any
29 small business concern to cover the direct costs of pro-
30 viding the assistance;

31 (III) the Administrator may provide to the cosponsor
32 mailing labels but not lists of names and addresses of
33 small business concerns compiled by the Administrator;

34 (IV) all printed materials containing the names of
35 both SBA and the cosponsor shall include a prominent
36 disclaimer that the cooperation does not constitute or
37 imply an endorsement by the Administrator of any prod-
38 uct or service of the cosponsor; and

39 (V) SBA shall receive appropriate recognition in all
40 cosponsorship printed materials.

41 (b) VOLUNTEER PROGRAMS.—

1 (1) IN GENERAL.—In carrying out this section, the Administrator
2 shall establish, conduct, and publicize, and recruit, select, and train vol-
3 unteers for, and enter into contracts, grants, or cooperative agreements
4 for, volunteer programs, including a service corps of retired executives
5 and an active corps of executives for the purposes of subsection (a).

6 (2) STAFF.—To facilitate the implementation of the volunteer pro-
7 grams, the Administrator shall, to the extent and in such amounts as
8 are provided in advance in appropriation Acts, maintain at SBA head-
9 quarters, and pay the salaries, benefits, and expenses of, a volunteer
10 and professional staff to manage and oversee the volunteer programs.

11 (3) CONTRIBUTIONS.—Notwithstanding any other provision of law,
12 SCORE may—

13 (A) solicit cash and in-kind contributions from the private sec-
14 tor to be used to carry out its functions under this subtitle; and

15 (B) use payments made by the Administrator under this sub-
16 section for such solicitation and management of the contributions
17 received.

18 (c) USE OF SBA FACILITIES.—The Administrator shall allow any individ-
19 ual or group of persons participating with the Administrator in furtherance
20 of this section to use such of SBA's office facilities and related material and
21 services (including clerical and stenographic services) as the Administrator
22 considers appropriate.

23 (d) VOLUNTEERS DEEMED TO BE FEDERAL EMPLOYEES FOR FEDERAL
24 TORT CLAIMS PURPOSES.—A volunteer, while carrying out an activity
25 under this section, shall be deemed to be a Federal employee for purposes
26 of chapter 171 of title 28.

27 (e) VOLUNTEERS DEEMED TO BE CIVIL EMPLOYEES FOR WORK INJURY
28 COMPENSATION PURPOSES.—A volunteer, while carrying out an activity
29 under this section, shall, for purposes of subchapter I of chapter 81 of title
30 5 (relative to compensation to Federal employees for work injuries), be
31 deemed to be a civil employee of the United States within the meaning of
32 the term "employee" as defined in section 8101 of title 5, and that sub-
33 chapter shall apply except that in computing compensation benefits for dis-
34 ability or death, the monthly pay of a volunteer shall be deemed to be that
35 received under the entrance salary for a grade GS-11 employee.

36 (f) REIMBURSEMENT OF VOLUNTEERS.—

37 (1) IN GENERAL.—The Administrator may reimburse a volunteer
38 carrying out an activity under this section for—

39 (A) all necessary out-of-pocket expenses incident to the volun-
40 teer's provision of services under this subtitle, or in connection
41 with attendance at a meeting sponsored by SBA;

1 (B) the cost of malpractice insurance, as the Administrator
2 shall determine, in accordance with regulations that the Adminis-
3 trator shall prescribe; and

4 (C) travel expenses (including per diem in lieu of subsistence)
5 as authorized by section 5703 of title 5 for individuals serving
6 without pay, while the volunteer is carrying out such an activity
7 away from the volunteer's home or regular place of business.

8 (2) TREATMENT OF PAYMENTS.—Notwithstanding any other provi-
9 sion of law, no payment for supportive services or reimbursement of
10 out-of-pocket expenses made to a volunteer serving under this section
11 shall be subject to any tax or charge or be treated as wages or com-
12 pensation for the purposes of unemployment, disability, retirement,
13 public assistance, or similar benefit payments, or minimum wage laws.

14 (g) LIMITATION ON PROVISION OF SERVICES TO PERSONS WITH A DE-
15 LINQUENT LOAN.—A volunteer carrying out an activity under this section
16 shall not provide any service to a person with a loan under this subtitle that
17 is delinquent except on a specific request for assistance signed by the person
18 in connection with the delinquency.

19 (h) GRANTS FOR BUSINESS COUNSELING AND ASSISTANCE.—

20 (1) IN GENERAL.—In carrying out this section, the Administrator
21 may make a grant to, or enter into a contract or cooperative agreement
22 with, a public or private institution of higher education for the estab-
23 lishment and operation of a small business institute, which shall be
24 used to provide business counseling and assistance to small business
25 concerns through the activities of students enrolled at the institution.

26 (2) EDUCATIONAL CREDITS.—A student engaged in an activity fund-
27 ed under paragraph (1) shall be entitled to receive educational credit
28 for the activity.

29 (i) PAYMENT OF EXPENSES IN JUDICIAL OR ADMINISTRATIVE PROCEED-
30 INGS.—Notwithstanding any other provision of law and in accordance with
31 regulations that the Administrator shall prescribe, in a judicial or adminis-
32 trative proceeding arising directly out of the performance of an activity
33 under this section to which a volunteer is made a party, the Administrator
34 may employ counsel and pay counsel fees, court costs, bail, and other ex-
35 penses incidental to the defense of the volunteer.

36 **§ 241104. Inventory of productive facilities**

37 (a) IN GENERAL.—The Administrator shall—

38 (1) make a complete inventory of all productive facilities of small
39 business concerns; or

40 (2) arrange for such an inventory to be made by any other govern-
41 mental agency that has the facilities.

1 (b) INFORMATION FROM STATE AGENCIES.—In making an inventory
2 under subsection (a), the Administrator or other governmental agency may
3 request an appropriate agency of a State to furnish an inventory of the pro-
4 ductive facilities of small business concerns in the State if such an inventory
5 is available or in prospect.

6 **§ 241105. Utilization of productive capacity**

7 The Administrator shall—

8 (1) coordinate and ascertain the means by which the productive ca-
9 pacity of small business concerns can be most effectively utilized; and

10 (2) consult and cooperate with officers of the Government having
11 procurement or property disposal powers, in order to utilize the poten-
12 tial productive capacity of plants operated by small business concerns.

13 **§ 241106. Subcontracting to small business concerns**

14 The Administrator shall—

15 (1) obtain information concerning methods and practices that Gov-
16 ernment prime contractors utilize in letting subcontracts; and

17 (2) take action to encourage the letting of subcontracts by prime
18 contractors to small business concerns at prices and on terms and con-
19 ditions that are fair and equitable.

20 **§ 241107. Size certification**

21 (a) IN GENERAL.—The Administrator shall determine within any indus-
22 try the concerns that qualify as a small business concern for purposes of
23 this subtitle.

24 (b) ISSUANCE OF CERTIFICATE.—When requested to do so, the Adminis-
25 trator shall issue a certificate certifying a concern as a small business con-
26 cern in accordance with the criteria stated in section 101102 of this title.

27 (c) REVOCATION OF CERTIFICATE.—A certificate issued under subsection
28 (b) shall be subject to revocation when the concern covered by the certificate
29 ceases to qualify as a small business concern.

30 (d) CONCLUSIVE DETERMINATION.—An officer of the Government having
31 procurement or lending power, or engaging in the disposal of Federal prop-
32 erty or allocating materials or supplies, or promulgating regulations affect-
33 ing the distribution of materials or supplies, shall accept as conclusive the
34 Administrator's determination whether a concern qualifies as a small busi-
35 ness concern.

36 **§ 241108. Responsibility certification**

37 (a) DEFINITIONS.—In this section:

38 (1) CONTRACTING OFFICER.—The term “contracting officer”
39 means—

40 (A) a contracting officer; and

1 (B) any other officer engaged in the sale and disposal of Fed-
2 eral property.

3 (2) RESPONSIBILITY.—The term “responsibility” includes capability,
4 competency, capacity, credit, integrity, perseverance, and tenacity.

5 (b) CERTIFICATION.—The Administrator shall certify to a contracting of-
6 ficer with respect to all elements of the responsibility of a small business
7 concern or group of small business concerns to receive and perform a spe-
8 cific Government contract.

9 (c) NO PRECLUSION FROM AWARD OF CONTRACT WITHOUT REFERRAL
10 TO THE ADMINISTRATOR.—A contracting officer may not, for any reason
11 relating to an element of responsibility as determined under subsection (b),
12 preclude a small business concern or group of small business concerns from
13 being awarded a contract without referring the matter for a final disposition
14 to the Administrator.

15 (d) CONCLUSIVE DETERMINATION.—A contracting officer shall—

16 (1) accept as conclusive a certification made under subsection (b) as
17 to the specific Government contract with respect to which the certifi-
18 cation is made; and

19 (2) let the contract to the small business concern or group of small
20 business concerns without requiring the small business concern or
21 group of small business concerns to meet any other requirement of re-
22 sponsibility or eligibility.

23 (e) NO EXEMPTION.—The Administrator may not establish an exemption
24 from referral or notification or refuse to accept a referral or notification
25 from a contracting officer made under subsection (c), but nothing in this
26 section requires the processing of an application for certification if the small
27 business concern to which the referral pertains declines to have the applica-
28 tion processed.

29 **§ 241109. Information pertaining to Federal procurement or**
30 **production**

31 The Administrator shall obtain from any Federal agency engaged in pro-
32 curement or in the financing of procurement or production such reports con-
33 cerning the letting of contracts and subcontracts and the making of loans
34 to business concerns as the Administrator considers pertinent in carrying
35 out the functions of the Administrator under this subtitle and subtitle I.

36 **§ 241110. Information pertaining to disposal of Federal**
37 **property**

38 The Administrator shall obtain from any Federal agency engaged in the
39 disposal of Federal property such reports concerning the solicitation of bids,
40 time of sale, or otherwise as the Administrator considers pertinent in carry-

1 ing out the functions of the Administrator under this subtitle and subtitle
2 I.

3 **§ 241111. Information pertaining to supplies of materials**

4 The Administrator shall obtain from suppliers of materials information
5 pertaining to the method of filling orders for materials, and the bases for
6 allocating their supplies of materials, when it appears that a small business
7 concern is unable to obtain material from its normal sources.

8 **§ 241112. Fair proportions of business for small business**
9 **concerns**

10 The Administrator shall make studies and recommendations to the appro-
11 priate Federal agencies to ensure that—

12 (1) a fair proportion of the total purchases and contracts for prop-
13 erty and services for the Government is placed with small business con-
14 cerns;

15 (2) a fair proportion of Government contracts for research and devel-
16 opment is placed with small business concerns;

17 (3) a fair proportion of the total sales of Government property is
18 made to small business concerns; and

19 (4) a fair and equitable share of materials, supplies, and equipment
20 is available to small business concerns.

21 **§ 241113. Fair and reasonable treatment of small business**
22 **concerns**

23 The Administrator shall consult and cooperate with all Federal agencies
24 for the purpose of ensuring that small business concerns receive fair and
25 reasonable treatment from Federal agencies.

26 **§ 241114. Information and assistance pertaining to federally**
27 **aided urban renewal projects**

28 The Administrator shall provide at the earliest practicable time such in-
29 formation and assistance as are appropriate (including information concern-
30 ing eligibility for loans under section 221103 of this title) to local public
31 agencies (as defined in section 110(h) of the Housing Act of 1949 (42
32 U.S.C. 1460(h))) and to small business concerns to be displaced by federally
33 aided urban renewal projects in order to assist the small business concerns
34 in reestablishing operations.

35 **§ 241115. Dissemination of information by the Administrator**

36 (a) IN GENERAL.—The Administrator shall disseminate, without regard
37 to section 3204 of title 39, information, in such form as the Administrator
38 considers appropriate, to public agencies, private organizations, and the gen-
39 eral public.

40 (b) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Ad-
41 ministrator shall, for each fiscal year—

- 1 (1) collect information concerning the procurement practices and
- 2 procedures of each Federal agency having procurement authority;
- 3 (2) publish and disseminate the information to contracting officers
- 4 in all Federal agencies; and
- 5 (3) make the information available to any small business concern
- 6 that requests the information.

7 **§ 241116. Availability of information from Federal agencies**

8 (a) REQUESTS FOR INFORMATION.—For any contract to be let by any
9 Federal agency, the Federal agency shall provide to any small business con-
10 cern, on request by the small business concern—

- 11 (1) a copy of bid sets and specifications with respect to the contract;
- 12 (2) the name and telephone number of an employee of the Federal
- 13 agency to answer questions with respect to the contract; and
- 14 (3) adequate citations to each major Federal law (including a regula-
- 15 tion) with which the small business concern must comply in performing
- 16 the contract.

17 (b) EXEMPT CONTRACTS.—Subsection (a) does not apply to a contract
18 (or subcontract) that—

- 19 (1) will be performed entirely outside the United States; or
- 20 (2) is for services that are personal in nature.

21 **§ 241117. Adjustment of regulations and programs to the**
22 **needs of small business concerns**

23 The Administrator shall—

- 24 (1) make studies of matters materially affecting the competitive
- 25 strength of small business concerns and of the effect on small business
- 26 concerns of Federal laws (including regulations) and programs; and
- 27 (2) make recommendations to Federal agencies as appropriate for
- 28 the adjustment of regulations and programs to the needs of small busi-
- 29 ness concerns.

30 **§ 241118. Outreach programs for disabled veterans, veter-**
31 **ans, and reservists**

32 (a) IN GENERAL.—The Administrator shall make grants to, and enter
33 into contracts and cooperative agreements with, educational institutions, pri-
34 vate businesses, veterans' nonprofit community-based organizations, and
35 Federal agencies and State and local agencies for the establishment and im-
36 plementation of outreach programs for disabled veterans, veterans, and re-
37 servists.

38 (b) INCREASE IN NUMBER OF VETERANS BUSINESS OUTREACH CEN-
39 TERS.—The Administrator shall use the authority under subsection (a) to
40 ensure that the number of veterans business outreach centers throughout

1 the United States increases by the number that the Administrator considers
2 appropriate, based on need, for each fiscal year.

3 **§ 241119. Consolidation of contract requirements**

4 (a) DEFINITIONS.—In this section:

5 (1) CHIEF ACQUISITION OFFICER.—The term “Chief Acquisition Of-
6 ficer” means the employee of a Federal agency designated as the Chief
7 Acquisition Officer for the Federal agency under section 1702 of title
8 41.

9 (2) CONSOLIDATION OF CONTRACT REQUIREMENTS.—The term
10 “consolidation of contract requirements”, with respect to contract re-
11 quirements of a Federal agency, means a use of a solicitation to obtain
12 offers for a single contract or a multiple award contract—

13 (A) to satisfy 2 or more requirements of the Federal agency for
14 goods or services that have been provided to or performed for the
15 Federal agency under 2 or more separate contracts lower in cost
16 than the total cost of the contract for which the offers are solie-
17 ited; or

18 (B) to satisfy requirements of the Federal agency for construc-
19 tion projects to be performed at 2 or more discrete sites.

20 (3) SENIOR PROCUREMENT EXECUTIVE.—The term “senior procure-
21 ment executive” means an official designated under section 1702(c) of
22 title 41 as the senior procurement executive for a Federal agency.

23 (b) DECISIONS REGARDING CONSOLIDATION OF CONTRACT REQUIRE-
24 MENTS.—The head of a Federal agency shall ensure that the decisions made
25 by the Federal agency regarding consolidation of contract requirements of
26 the Federal agency are made with a view to providing small business con-
27 cerns with appropriate opportunities to participate as prime contractors and
28 subcontractors in the procurements of the Federal agency.

29 (c) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CON-
30 SOLIDATION.—

31 (1) IN GENERAL.—The head of a Federal agency shall not carry out
32 an acquisition strategy that includes a consolidation of contract re-
33 quirements of the Federal agency with a total value of more than
34 \$2,000,000 unless the senior procurement executive or Chief Acquisi-
35 tion Officer for the Federal agency, before carrying out the acquisition
36 strategy—

37 (A) conducts market research;

38 (B) identifies any alternative contracting approaches that would
39 involve a lesser degree of consolidation of contract requirements;

40 (C) makes a written determination that the consolidation of con-
41 tract requirements is necessary and justified;

1 (D) identifies any negative impact by the acquisition strategy on
2 contracting with small business concerns; and

3 (E) ensures that steps will be taken to include small business
4 concerns in the acquisition strategy.

5 (2) DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUSTIFIED.—
6

7 (A) IN GENERAL.—A senior procurement executive or Chief Acquisition
8 Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and
9 justified for the purposes of paragraph (1)(C) if the benefits of the
10 acquisition strategy substantially exceed the benefits of each of the
11 possible alternative contracting approaches identified under paragraph (1)(B).
12

13 (B) SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.—For
14 purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a
15 consolidation of contract requirements in a procurement unless the
16 expected total amount of the cost savings, as determined by the
17 senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.
18

19 (3) BENEFITS TO BE CONSIDERED.—The benefits considered for the
20 purposes of paragraphs (1) and (2) may include—
21

22 (A) cost; and

23 (B) regardless of whether quantifiable in dollar amounts—

24 (i) quality;

25 (ii) acquisition cycle;

26 (iii) terms and conditions; and

27 (iv) any other benefit.
28
29

30 **Chapter 243—Subcontracting Provisions**

Sec.

243101. Opportunity to participate in performance of contracts.

243102. Notice of provisions relating to contracts awarded pursuant to the negotiated method of procurement.

243103. Subcontracting plans.

243104. Incentives.

243105. Liquidated damages.

243106. Payment of subcontractors.

243107. Subcontracting misrepresentations.

243108. Material breach.

243109. Effect of chapter.

1 **§ 243101. Opportunity to participate in performance of con-**
2 **tracts**

3 (a) IN GENERAL.—The clause stated in subsection (c) shall be included
4 in all contracts let by a Federal agency except a contract described in sub-
5 section (b).

6 (b) EXCEPTED CONTRACTS.—The clause stated in subsection (c) need not
7 be included in—

8 (1) a contract that does not exceed the simplified acquisition thresh-
9 old;

10 (2) a contract (including all subcontracts under the contract) that
11 will be performed entirely outside the United States; or

12 (3) a contract for a service that is personal in nature.

13 (c) REQUIRED CLAUSE.—The clause required by subsection (a) is as fol-
14 lows:

15 “(1) DEFINITIONS.—

16 “(A) IN GENERAL.—As used in this contract, each of the terms
17 ‘qualified HUBZone small business concern’, ‘small business con-
18 cern’, ‘small business concern owned and controlled by service-dis-
19 abled veterans’, ‘small business concern owned and controlled by
20 socially and economically disadvantaged individuals’, ‘small busi-
21 ness concern owned and controlled by veterans’, and ‘small busi-
22 ness concern owned and controlled by women’ has the meaning
23 given the term in section 101102 of title 53, United States Code.

24 “(B) PRESUMPTION.—For purposes of applying the definition
25 of ‘small business concern owned and controlled by socially and
26 economically disadvantaged individuals’, the contractor shall pre-
27 sume that socially and economically disadvantaged individuals in-
28 clude Black Americans, Hispanic Americans, Native Americans,
29 Asian Pacific Americans, and other minorities, or any other indi-
30 vidual found to be disadvantaged by the United States Small Busi-
31 ness Administration.

32 “(2) POLICY.—It is the policy of the United States that qualified
33 HUBZone small business concerns, small business concerns owned and
34 controlled by service-disabled veterans, small business concerns owned
35 and controlled by socially and economically disadvantaged individuals,
36 small business concerns owned and controlled by veterans, small busi-
37 ness concerns owned and controlled by women, and other small busi-
38 ness concerns shall have the maximum practicable opportunity to par-
39 ticipate in the performance of contracts let by any Federal agency, in-
40 cluding contracts and subcontracts for subsystems, assemblies, compo-
41 nents, and related services for major systems. It is further the policy

1 of the United States that its prime contractors establish procedures to
2 ensure the timely payment of amounts due pursuant to the terms of
3 their subcontracts with qualified HUBZone small business concerns,
4 small business concerns owned and controlled by service-disabled veter-
5 ans, small business concerns owned and controlled by socially and eco-
6 nomically disadvantaged individuals, small business concerns owned
7 and controlled by veterans, small business concerns owned and con-
8 trolled by women, and other small business concerns.

9 “(3) AGREEMENT.—The contractor agrees—

10 “(A) to carry out the policy stated in paragraph (2) in the
11 awarding of subcontracts to the fullest extent consistent with the
12 efficient performance of this contract; and

13 “(B) to cooperate in any studies or surveys that may be con-
14 ducted by the United States Small Business Administration or the
15 awarding agency of the United States as necessary to determine
16 the extent of the contractor’s compliance with this clause.

17 “(4) RELIANCE ON WRITTEN REPRESENTATION.—The contractor,
18 acting in good faith, may rely on a written representation by a sub-
19 contractor regarding its status as a qualified HUBZone small business
20 concern, small business concern owned and controlled by service-dis-
21 abled veterans, small business concern owned and controlled by socially
22 and economically disadvantaged individuals, small business concern
23 owned and controlled by veterans, small business concern owned and
24 controlled by women, or other small business concern.”

25 **§ 243102. Notice of provisions relating to contracts awarded**
26 **pursuant to the negotiated method of procurement**

27 (a) REQUIRED CLAUSE.—A solicitation of an offer for a contract de-
28 scribed in subsection (b) shall contain a clause notifying potential offering
29 companies of the provisions of this chapter relating to contracts awarded
30 pursuant to the negotiated method of procurement.

31 (b) CONTRACTS.—A contract referred to in subsection (a) is a contract
32 let by a Federal agency that—

33 (1) is to be awarded pursuant to the negotiated method of procure-
34 ment; and

35 (2) may exceed—

36 (A) \$1,000,000, in the case of a contract for the construction
37 of a public facility; or

38 (B) \$500,000, in the case of any other contract.

39 **§ 243103. Subcontracting plans**

40 (a) DEFINITIONS.—In this section:

1 (1) BIDDER.—The term “bidder” does not include a bidder that is
2 a small business concern.

3 (2) OFFEROR.—The term “offeror” does not include an offeror that
4 is a small business concern.

5 (b) NEGOTIATED PROCUREMENTS.—

6 (1) NEGOTIATION.—Before the award of any contract described in
7 paragraph (2), or any amendment or modification to such a contract,
8 the apparent successful offeror shall negotiate with the procurement
9 authority a subcontracting plan that incorporates the information pre-
10 scribed in subsection (d).

11 (2) CONTRACTS.—A contract referred to in paragraph (1) is a con-
12 tract let by a Federal agency that—

13 (A) is to be (or was) awarded pursuant to the negotiated meth-
14 od of procurement;

15 (B) is required to include the clause stated in section 243101
16 of this title;

17 (C) may exceed—

18 (i) \$1,000,000, in the case of a contract for the construc-
19 tion of a public facility; or

20 (ii) \$500,000, in the case of any other contract; and

21 (D) offers a subcontracting possibility.

22 (3) INCLUSION IN CONTRACT.—The subcontracting plan shall be in-
23 cluded in and made a material part of the contract.

24 (4) FAILURE TO NEGOTIATE SUBCONTRACTING PLAN.—If, within the
25 time prescribed in regulations of the procuring agency, the apparent
26 successful offeror fails to negotiate the subcontracting plan required by
27 paragraph (1), the offeror shall be ineligible to be awarded the con-
28 tract.

29 (5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBIL-
30 ITY.—Prior compliance of the offeror with other subcontracting plans
31 under this subsection shall be considered by a procuring agency in de-
32 termining the responsibility of the offeror for the award of the contract.

33 (6) MAXIMUM OPPORTUNITY.—No contract shall be awarded to any
34 offeror unless the procuring agency determines that the subcontracting
35 plan to be negotiated by the offeror under paragraph (2) provides the
36 maximum practicable opportunity for qualified HUBZone small busi-
37 ness concerns, small business concerns owned and controlled by service-
38 disabled veterans, small business concerns owned and controlled by so-
39 cially and economically disadvantaged individuals, small business con-
40 cerns owned and controlled by veterans, small business concerns owned

1 and controlled by women, and other small business concerns, to partici-
2 pate in the performance of the contract.

3 (c) ADVERTISED PROCUREMENTS.—

4 (1) REQUIRED CLAUSE.—A solicitation of a bid for a contract de-
5 scribed in paragraph (2), or any amendment or modification to such
6 a contract, shall contain a clause requiring any bidder that is selected
7 to be awarded a contract to submit to the procuring agency a sub-
8 contracting plan that incorporates the information prescribed in sub-
9 section (d).

10 (2) CONTRACTS.—A contract referred to in paragraph (1) is a con-
11 tract let by a Federal agency that—

12 (A) is to be awarded pursuant to the formal advertising method
13 of procurement;

14 (B) is required to contain the clause stated in section 243101
15 of this title;

16 (C) may exceed—

17 (i) \$1,000,000, in the case of a contract for the construc-
18 tion of a public facility; or

19 (ii) \$500,000, in the case of any other contract; and

20 (D) offers a subcontracting possibility.

21 (3) INCLUSION IN CONTRACT.—The subcontracting plan of the bid-
22 der awarded the contract shall be included in and made a material part
23 of the contract.

24 (4) FAILURE TO SUBMIT SUBCONTRACTING PLAN.—If, within the
25 time prescribed in regulations of the procuring agency, the bidder se-
26 lected to be awarded the contract fails to submit the subcontracting
27 plan required by paragraph (1), the bidder shall become ineligible to
28 be awarded the contract.

29 (5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBIL-
30 ITY.—Prior compliance of the bidder with other subcontracting plans
31 under this subsection shall be considered by the procuring agency in
32 determining the responsibility of the bidder for the award of the con-
33 tract.

34 (d) CONTENTS OF SUBCONTRACTING PLAN.—A subcontracting plan shall
35 include—

36 (1) percentage goals for the utilization as subcontractors of qualified
37 HUBZone small business concerns, small business concerns owned and
38 controlled by service-disabled veterans, small business concerns owned
39 and controlled by socially and economically disadvantaged individuals,
40 small business concerns owned and controlled by veterans, small busi-

1 ness concerns owned and controlled by women, and other small busi-
2 ness concerns;

3 (2) the name of an individual within the employ of the offeror or
4 bidder who will administer the subcontracting program of the offeror
5 or bidder and a description of the duties of that individual;

6 (3) a description of the efforts that the offeror or bidder will take
7 to ensure that qualified HUBZone small business concerns, small busi-
8 ness concerns owned and controlled by service-disabled veterans, small
9 business concerns owned and controlled by socially and economically
10 disadvantaged individuals, small business concerns owned and con-
11 trolled by veterans, small business concerns owned and controlled by
12 women, and other small business concerns will have an equitable oppor-
13 tunity to compete for subcontracts;

14 (4) assurances that the offeror or bidder will—

15 (A) include the clause required by section 243101 of this title
16 in all subcontracts that offer further subcontracting opportunities;
17 and

18 (B) require all subcontractors (except small business concerns)
19 that receive subcontracts in excess of \$1,000,000 in the case of
20 a contract for the construction of a public facility, or in excess of
21 \$500,000 in the case of any other contract, to adopt a sub-
22 contracting plan similar to the subcontracting plan required under
23 subsection (b) or (c);

24 (5) assurances that the offeror or bidder will submit such periodic
25 reports and cooperate in any studies or surveys as may be required by
26 the procuring agency or the Administrator to determine the extent of
27 compliance by the offeror or bidder with the subcontracting plan;

28 (6) a recitation of—

29 (A) the types of records that the successful offeror or bidder will
30 maintain to demonstrate procedures that are adopted to comply
31 with the requirements and goals set forth in the subcontracting
32 plan, including the establishment of source lists of qualified HUB-
33 Zone small business concerns, small business concerns owned and
34 controlled by service-disabled veterans, small business concerns
35 owned and controlled by socially and economically disadvantaged
36 individuals, small business concerns owned and controlled by veter-
37 ans, small business concerns owned and controlled by women, and
38 other small business concerns; and

39 (B) efforts to identify and award subcontracts to small business
40 concerns; and

41 (7) a representation that the offeror or bidder will—

1 (A) make a good faith effort to acquire articles, equipment, sup-
2 plies, services, or materials or obtain the performance of construc-
3 tion work from the small business concerns used in preparing and
4 submitting to the contracting agency the bid or proposal, in the
5 same amount and quality used in preparing and submitting the
6 bid or proposal; and

7 (B) provide to the contracting officer a written explanation if
8 the offeror or bidder fails to acquire articles, equipment, supplies,
9 services, or materials or obtain the performance of construction
10 work as described in subparagraph (A).

11 (e) NOTIFICATION OF INTENTION TO IDENTIFY SMALL BUSINESS CON-
12 CERN AS POTENTIAL SUBCONTRACTOR.—

13 (1) DEFINITION OF COVERED CONTRACT.—In this subsection, the
14 term “covered contract” means a contract relating to which a prime
15 contractor is required to develop a subcontracting plan under this sec-
16 tion.

17 (2) NOTIFICATION.—An offeror for a covered contract that intends
18 to identify a small business concern as a potential subcontractor in a
19 bid or proposal for the contract, or in a plan submitted under this sec-
20 tion in connection with the covered contract, shall notify the small busi-
21 ness concern before making the identification.

22 (f) ATTAINMENT OF GOALS.—

23 (1) ATTAINABILITY OF GOALS.—A Federal agency shall ensure that
24 the goals offered by an apparent successful bidder or offeror are attain-
25 able in relation to—

26 (A) the subcontracting opportunities available to the contractor,
27 commensurate with the efficient and economical performance of
28 the contract;

29 (B) the pool of eligible subcontractors available to fulfill the
30 subcontracting opportunities; and

31 (C) the actual performance of the contractor in fulfilling the
32 subcontracting goals specified in prior subcontracting plans.

33 (2) CREDIT FOR DEVELOPMENT ASSISTANCE.—For purposes of de-
34 termining the attainment of a subcontract utilization goal under a sub-
35 contracting plan entered into with an executive agency under sub-
36 section (b) or (c), a mentor firm that provides development assistance
37 to a protégé firm under the pilot Mentor-Protégé Program established
38 pursuant to section 831 of the National Defense Authorization Act for
39 Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) shall
40 be granted credit for the assistance in accordance with subsection (g)
41 of that section.

1 (g) BUNDLED CONTRACTS.—The following factors shall be designated by
2 a Federal agency as significant factors for purposes of evaluating offers for
3 a bundled contract if the head of the Federal agency determines that the
4 contract offers a significant opportunity for subcontracting:

5 (1) A factor that is based on the rate provided under the sub-
6 contracting plan for small business participation in the performance of
7 the contract.

8 (2) For the evaluation of past performance of an offeror, a factor
9 that is based on the extent to which the offeror attained applicable
10 goals for small business participation in the performance of contracts.

11 (h) COMPLIANCE ASSISTANCE.—The Administrator may—

12 (1) assist Federal agencies and businesses in complying with their
13 responsibilities under this section, including the formulation of sub-
14 contracting plans;

15 (2)(A) review any solicitation for any contract to be let under sub-
16 section (b) or (c) to determine the maximum practicable opportunity
17 for qualified HUBZone small business concerns, small business con-
18 cerns owned and controlled by service-disabled veterans, small business
19 concerns owned and controlled by socially and economically disadvan-
20 taged individuals, small business concerns owned and controlled by vet-
21 erans, small business concerns owned and controlled by women, and
22 other small business concerns to participate as subcontractors in the
23 performance of any contract resulting from any solicitation; and

24 (B) submit findings, which shall be advisory in nature, to the procur-
25 ing agency; and

26 (3) evaluate compliance with subcontracting plans as a supplement
27 to evaluation by the contracting agency—

28 (A) on a contract-by-contract basis; or

29 (B) in the case of a contractor having multiple contracts, on an
30 aggregate basis.

31 (i) COLLECTION, REPORTING, AND REVIEW OF DATA.—The head of a
32 contracting agency shall ensure that—

33 (1) the contracting agency collects and reports data on the extent
34 to which contractors of the agency meet the goals and objectives set
35 forth in subcontracting plans submitted under this section; and

36 (2) the contracting agency periodically reviews data collected and re-
37 ported under paragraph (1) for the purpose of ensuring that contrac-
38 tors of the agency comply in good faith with the requirements of this
39 section and subcontracting plans submitted by the contractors under
40 this section.

1 (j) FRAUDULENT OR BAD FAITH ACTIVITY REPORTING MECHANISM.—
2 The Administrator shall establish a reporting mechanism that allows a sub-
3 contractor or potential subcontractor to report fraudulent activity or bad
4 faith by a contractor with respect to a subcontracting plan submitted under
5 this section.

6 (k) ELECTRONIC SUBCONTRACTING REPORTING SYSTEM.—The Adminis-
7 trator shall take such actions as are necessary to ensure that the electronic
8 subcontracting reporting system established by the Administrator to carry
9 out the requirement of subsection (d)(5) is able to identify entities that fail
10 to submit required reports.

11 **§ 243104. Incentives**

12 Notwithstanding any other provision of law, a Federal agency, to encour-
13 age subcontracting opportunities for qualified HUBZone small business con-
14 cerns, small business concerns owned and controlled by service-disabled vet-
15 erans, small business concerns owned and controlled by socially and eco-
16 nomically disadvantaged individuals, small business concerns owned and
17 controlled by veterans, small business concerns owned and controlled by
18 women, and other small business concerns, may provide such incentives as
19 the Federal agency considers appropriate to encourage such subcontracting
20 opportunities as are commensurate with the efficient and economical per-
21 formance of a contract that is let pursuant to the negotiated method of pro-
22 curement.

23 **§ 243105. Liquidated damages**

24 (a) REQUIRED CLAUSE.—

25 (1) IN GENERAL.—A contract subject to subsection (b) or (c) of sec-
26 tion 243103 of this title shall contain a clause for the payment of liq-
27 uidated damages on a finding that a prime contractor has failed to
28 make a good faith effort to comply with the requirements imposed on
29 the contractor by this chapter.

30 (2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The clause
31 required by paragraph (1) shall be made part of the Federal Acquisi-
32 tion Regulation.

33 (b) DEMONSTRATION OF GOOD FAITH EFFORT.—A contractor shall be
34 afforded an opportunity to demonstrate a good faith effort regarding com-
35 pliance prior to the contracting officer's final decision regarding the imposi-
36 tion of damages and the amount of damages under subsection (a).

37 (c) DISPUTE RESOLUTION.—The final decision of a contracting officer re-
38 garding the contractor's obligation to pay damages under subsection (a) or
39 the amount of damages shall be subject to chapter 71 of title 41.

1 **§ 243106. Payment of subcontractors**

2 (a) DEFINITION OF COVERED CONTRACT.—In this section, the term
3 “covered contract” means a contract relating to which a prime contractor
4 is required to develop a subcontracting plan under section 243103 of this
5 title.

6 (b) NOTICE.—

7 (1) IN GENERAL.—A prime contractor for a covered contract shall
8 notify in writing the contracting officer for the covered contract if—

9 (A) the prime contractor pays a reduced price to a subcontractor
10 for a good or service on completion of the responsibilities of
11 the subcontractor; or

12 (B) the payment to a subcontractor is more than 90 days past
13 due for a good or service provided for the covered contract for
14 which the Federal agency has paid the prime contractor.

15 (2) CONTENTS.—A prime contractor shall include in a notice under
16 paragraph (1) the reason for the reduction in a payment to or failure
17 to pay a subcontractor.

18 (c) PERFORMANCE EVALUATION.—In evaluating the performance of a
19 prime contractor, the contracting officer for a covered contract shall take
20 into consideration an unjustified failure by the prime contractor to make a
21 full or timely payment to a subcontractor.

22 (d) CONTROL OF FUNDS.—If the contracting officer for a covered con-
23 tract determines that a prime contractor has a history of unjustified failures
24 to make full and timely payment to 1 or more subcontractors, the contract-
25 ing officer shall record the identity of the contractor in accordance with the
26 regulations promulgated under subsection (e).

27 (e) REGULATIONS.—The Federal Acquisition Regulatory Council shall
28 amend the Federal Acquisition Regulation to—

29 (1) describe the circumstances under which a contractor may be de-
30 termined to have a history of unjustified failures to make full and time-
31 ly payment to 1 or more subcontractors;

32 (2) establish a process for contracting officers to record the identity
33 of a contractor described in paragraph (1); and

34 (3) require the identity of a contractor described in paragraph (1)
35 to be incorporated in, and made publicly available through, the Federal
36 Awardee Performance and Integrity Information System, or any suc-
37 cessor to the System.

38 **§ 243107. Subcontracting misrepresentations**

39 The Administrator, in consultation with the Administrator for Federal
40 Procurement Policy, shall promulgate regulations relating to, and the Fed-
41 eral Acquisition Regulatory Council shall amend the Federal Acquisition

1 Regulation to establish a policy on, subcontracting compliance relating to
2 small business concerns, including—

3 (1) assignment of compliance responsibilities between contracting of-
4 fices, small business offices, and program offices; and

5 (2) periodic oversight and review activities.

6 **§ 243108. Material breach**

7 The failure of a contractor or subcontractor to comply in good faith with
8 the clause required under section 243101 of this title or with a subcontract-
9 ing plan required of the contractor under section 243103 of this title to be
10 included in its contract or subcontract—

11 (1) shall be a material breach of the contract or subcontract; and

12 (2) may be considered in any past performance evaluation of the con-
13 tactor.

14 **§ 243109. Effect of chapter**

15 Nothing in this chapter supersedes the requirements of part 331 of title
16 44, Code of Federal Regulations (or any successor regulation).

17 **Chapter 245—Notice Provisions**

Sec.

245101. Notices of intention to solicit certain bids or proposals or to place certain orders.

245102. Notices of subcontracting opportunity.

245103. Limited applicability to Tennessee Valley Authority.

18 **§ 245101. Notices of intention to solicit certain bids or pro-**
19 **posals or to place certain orders**

20 (a) IN GENERAL.—Except as provided in subsection (e)—

21 (1) an executive agency that intends to—

22 (A) solicit bids or proposals for a contract for property or serv-
23 ices for a price expected to exceed \$25,000; or

24 (B) place an order, expected to exceed \$25,000, under a basic
25 agreement, basic ordering agreement, or similar arrangement;

26 shall publish a notice described in subsection (d);

27 (2) an executive agency intending to solicit bids or proposals for a
28 contract for property or services shall post, for a period of not less than
29 10 days, in a public place at the contracting office issuing the solicita-
30 tion, a notice of solicitation described in subsection (d)—

31 (A) in the case of an executive agency other than the Depart-
32 ment of Defense, if the contract is for a price expected to exceed
33 \$10,000, but not to exceed \$25,000; and

34 (B) in the case of the Department of Defense, if the contract
35 is for a price expected to exceed \$5,000, but not to exceed
36 \$25,000; and

37 (3) an executive agency awarding a contract for property or services
38 for a price exceeding \$100,000, or placing an order described in para-

1 graph (1)(B) exceeding \$100,000, shall furnish for publication by the
2 Secretary of Commerce a notice announcing the award or order if there
3 is likely to be a subcontract under the contract or order.

4 (b) MEANS OF PUBLICATION.—A notice of solicitation required to be pub-
5 lished under subsection (a) may be published by an electronic means that
6 meets the accessibility requirements under section 1708(d) of title 41.

7 (c) LIMITATIONS.—When an executive agency is required by subsection
8 (a)(1) to publish a notice of solicitation, the executive agency shall not—

9 (1) issue the solicitation earlier than 15 days after the date on which
10 the notice is published; or

11 (2) in the case of a contract or order estimated to be greater than
12 the simplified acquisition threshold, establish a deadline for the submis-
13 sion of all bids or proposals in response to the notice required by sub-
14 section (a)(1) that—

15 (A) in the case of an order under a basic agreement, basic or-
16 dering agreement, or similar arrangement, is earlier than the date
17 that is 30 days after the date on which the notice required by sub-
18 section (a)(1)(B) is published;

19 (B) in the case of a solicitation for research and development,
20 is earlier than the date that is 45 days after the date on which
21 the notice required by subsection (a)(1)(A) is published; or

22 (C) in any other case, is earlier than the date that is 30 days
23 after the date on which the solicitation is issued.

24 (d) CONTENTS OF NOTICE.—

25 (1) IN GENERAL.—A notice of solicitation required by paragraph (1)
26 or (2) of subsection (a) shall include—

27 (A) an accurate description of the property or services to be
28 contracted for;

29 (B) provisions that—

30 (i)(I) state whether the technical data required to respond
31 to the solicitation will not be furnished as part of the solicita-
32 tion; and

33 (ii)(I) identify the source in the Government, if any, from
34 which the technical data may be obtained; and

35 (ii)(II) state whether an offeror, its product, or service must
36 meet a qualification requirement in order to be eligible for
37 award; and

38 (ii)(III) if so, identify the office from which a qualification re-
39 quirement may be obtained;

40 (C) the name, business address, and telephone number of the
41 contracting officer;

1 (D) a statement that all responsible sources may submit a bid,
2 proposal, or quotation (as appropriate) that shall be considered by
3 the agency;

4 (E) in the case of a procurement using procedures other than
5 competitive procedures, a statement of the reason justifying the
6 use of such procedures and the identity of the intended source;
7 and

8 (F) in the case of a contract in an amount estimated to be
9 greater than \$25,000 but not greater than the simplified acquisi-
10 tion threshold—

11 (i) a description of the procedures to be used in awarding
12 the contract; and

13 (ii) a statement specifying the periods for prospective offer-
14 ers and the contracting officer to take the necessary preaward
15 and award actions.

16 (2) PROPERTY OR SERVICE DESCRIPTION.—A property or service de-
17 scription under paragraph (1)(A)—

18 (A) shall not be unnecessarily restrictive of competition; and

19 (B) shall include, as appropriate, the agency nomenclature, Na-
20 tional Stock Number or other part number, and a brief description
21 of the item's form, fit, or function, physical dimensions, predomi-
22 nant material of manufacture, or similar information that will as-
23 sist a prospective contractor in making an informed business judg-
24 ment concerning whether the prospective contractor should request
25 a copy of the solicitation.

26 (e) EXEMPTED ACTIVITIES.—A notice is not required under subsection
27 (a)(1) if—

28 (1) the proposed procurement—

29 (A) is for an amount not greater than the simplified acquisition
30 threshold; and

31 (B) is to be conducted by—

32 (i) using widespread electronic public notice of the solicita-
33 tion in a form that allows convenient and universal user ac-
34 cess through a single, Governmentwide point of entry; and

35 (ii) permitting the public to respond to the solicitation elec-
36 tronically;

37 (2)(A) the notice would disclose the executive agency's needs; and

38 (B) the disclosure of those needs would compromise the national se-
39 curity;

1 (3)(A) the proposed procurement would result from acceptance of an
2 unsolicited proposal that demonstrates a unique and innovative re-
3 search concept; and

4 (B) the publication of a notice of the unsolicited research proposal
5 would disclose the originality of thought or innovativeness of the pro-
6 posal or would disclose proprietary information associated with the pro-
7 posal;

8 (4) the proposed procurement would result from acceptance of a pro-
9 posal submitted under chapter 263;

10 (5) the procurement is made against an order placed under a re-
11 quirements contract;

12 (6) the procurement is made for perishable subsistence supplies;

13 (7)(A) the procurement is for a utility service other than a tele-
14 communication service; and

15 (B) only 1 source is available; or

16 (8) the procurement is for the service of an expert for use in any
17 litigation or dispute (including preparation for any foreseeable litigation
18 or dispute) that involves or could involve the Federal Government in
19 any trial, hearing, or proceeding before any court, administrative tribu-
20 nal, or agency, or in any part of an alternative dispute resolution pro-
21 cess, whether or not the expert is expected to testify.

22 (f) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE.—

23 (1) IN GENERAL.—An executive agency shall make available to any
24 business concern, or the authorized representative of a business con-
25 cern, the complete solicitation package for any ongoing procurement
26 announced in a notice under this section.

27 (2) FEE.—An executive agency may require the payment of a fee,
28 not exceeding the actual cost of duplication, for a copy of a solicitation
29 package under paragraph (1).

30 **§ 245102. Notices of subcontracting opportunity**

31 (a) IN GENERAL.—A notice of subcontracting opportunity may be sub-
32 mitted for publication on the appropriate Federal website (as determined by
33 the Administrator) by—

34 (1) a contractor that is a business concern that is awarded a con-
35 tract by an executive agency subject to section 245101(a)(3) of this
36 title section; or

37 (2) a business concern that is a subcontractor or supplier (at any
38 tier) to a contractor described in paragraph (1) that has a subcontract-
39 ing opportunity in excess of \$10,000.

40 (b) CONTENTS.—A notice of a subcontracting opportunity shall include—

1 (1) a description of the business opportunity that is comparable to
2 the description specified in subparagraphs (A), (B), (C), and (D) of
3 section 245101(d)(1) of this title; and

4 (2) the deadline for receipt of offers.

5 (e) UNIFORM IMPLEMENTATION.—The Federal Acquisition Regulation
6 shall provide for uniform implementation of this section.

7 **§ 245103. Limited applicability to Tennessee Valley Author-**
8 **ity**

9 This chapter applies to the Tennessee Valley Authority only with respect
10 to procurements to be paid from appropriated funds.

11 **Chapter 247—Noncompetitive Procedures**

Sec.

247101. Limitation on use of noncompetitive procedures.

247102. Limited applicability to Tennessee Valley Authority.

12 **§ 247101. Limitation on use of noncompetitive procedures**

13 (a) IN GENERAL.—An executive agency may not award a contract using
14 noncompetitive procedures unless—

15 (1) except as provided in subsection (c), a written justification for
16 the use of noncompetitive procedures has been approved—

17 (A) in the case of a contract for an amount exceeding \$100,000
18 (but equal to or less than \$1,000,000), by the advocate for com-
19 petition for the procurement activity;

20 (B) in the case of a contract for an amount exceeding
21 \$1,000,000 (but equal to or less than \$10,000,000), by the head
22 of the procurement activity or a delegate who—

23 (i) if a member of the Armed Forces, is a general or flag
24 officer; or

25 (ii) if a civilian, is serving in a position classified above
26 GS-15 pursuant to section 5108 of title 5; or

27 (C) in the case of a contract for an amount exceeding
28 \$10,000,000, by the senior procurement executive of the agency
29 designated pursuant to section 1702(e) of title 41; and

30 (2) all other requirements applicable to the use of noncompetitive
31 procedures under section 3304 of title 41 or chapter 137 of title 10,
32 as appropriate, have been satisfied.

33 (b) NONDELEGABILITY.—The authority of an advocate for competition to
34 approve the use of noncompetitive procedures under subsection (a)(1)(A)
35 and the authority of a senior procurement executive to approve the use of
36 noncompetitive procedures under subsection (a)(1)(C) may not be delegated.

37 (c) EXCEPTIONS.—The same exceptions as are provided in section
38 3304(e)(4) of title 41 or section 2304(f)(2) of title 10 shall apply with re-
39 spect to the requirements of subsection (a)(1) of this section in the same

1 manner as those exceptions apply to the requirements of section 3304(e)(1)
 2 of title 41 or section 2304(f)(1) of title 10, as appropriate.

3 **§ 247102. Limited applicability to Tennessee Valley Author-**
 4 **ity**

5 This chapter applies to the Tennessee Valley Authority only with respect
 6 to procurements to be paid from appropriated funds.

7 **Division H—Contract Reservation**
 8 **Programs**
 9 **Chapter 251—General Provisions**

Sec.

- 251101. Awards of contracts to small business concerns.
- 251102. Placement of contracts by procuring agency.
- 251103. Disabled individuals.
- 251104. Priority for areas of concentrated unemployment or underemployment and for labor surplus areas.
- 251105. Procurement strategies; contract bundling.
- 251106. Goals for participation by small business concerns in procurement contracts.
- 251107. No effect on certain small business setasides.
- 251108. Mandatory contract reservation.
- 251109. Offices of Small and Disadvantaged Business Utilization.
- 251110. Procurement center representatives.
- 251111. Department of Defense, Coast Guard, and National Aeronautics and Space Administration contract goals.
- 251112. Actions by procurement center representatives to ensure compliance.
- 251113. Limitations on subcontracting.
- 251114. Multiple award contracts.

10 **§ 251101. Awards of contracts to small business concerns**

11 (a) IN GENERAL.—Subject to subsection (b), a small business concern
 12 shall receive any award or contract (or any part of an award or contract),
 13 and be awarded any contract for the sale of Government property, as to
 14 which the Administrator and the contracting procurement or disposal agen-
 15 cy determine it to be in the interest of—

- 16 (1) maintaining or mobilizing the Nation's full productive capacity;
- 17 (2) war or national defense programs;
- 18 (3) ensuring that a fair proportion of the total purchases and con-
 19 tracts for property and services for the Government in each industry
 20 category are placed with small business concerns; or
- 21 (4) ensuring that a fair proportion of the total sales of Government
 22 property be made to small business concerns.

23 (b) NO CHANGE IN PREFERENCES OR PRIORITIES.—Nothing in this sub-
 24 title changes any preference or priority established by law with respect to
 25 the sale of electric power or other property by the Government or any Gov-
 26 ernment agency.

27 (c) DETERMINATIONS.—A determination under subsection (a) may be
 28 made for individual awards or contracts or for classes of awards or con-
 29 tracts.

30 (d) INDUSTRY CATEGORIES.—

1 (1) IN GENERAL.—For purposes of subsection (a)(3), an industry
2 category is a discrete group of similar goods and services.

3 (2) DETERMINATION.—A discrete group of similar goods and serv-
4 ices shall be determined by the Administrator in accordance with the
5 definition of a United States industry under the North American In-
6 dustry Classification System, as established by the Office of Manage-
7 ment and Budget, except that the Administrator shall limit such an in-
8 dustry category to a greater extent than provided under the North
9 American Industry Classification System if the Administrator receives
10 evidence indicating that further segmentation for purposes of sub-
11 section (a)(3) is warranted due to special capital equipment needs or
12 special labor or geographic requirements or to recognize a new indus-
13 try.

14 (3) LIMITATION.—A market for goods or services may not be seg-
15 mented under paragraph (2) due to geographic requirements unless—

16 (A) the Government typically designates the area where work
17 for contracts for such goods or services is to be performed;

18 (B) Government purchases comprise the major portion of the
19 entire domestic market for such goods or services; and

20 (C) due to the fixed location of facilities, high mobilization
21 costs, or similar economic factors, it is unreasonable to expect
22 competition from business concerns located outside the general
23 areas where the business concerns are located.

24 (e) AVOIDANCE OF CONTRACT BUNDLING.—To foster the participation of
25 small business concerns in the contracting opportunities of the Government,
26 a Federal agency, to the maximum extent practicable, shall—

27 (1) foster the participation of small business concerns as prime con-
28 tractors, subcontractors, and suppliers;

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

32 (3) avoid unnecessary and unjustified bundling of contract require-
33 ments that precludes participation by small business in procurements
34 as prime contractors.

35 (f) PROPOSED PROCUREMENTS THAT MAKE PARTICIPATION BY SMALL
36 BUSINESS CONCERNS UNLIKELY.—

37 (1) NOTIFICATION OF SMALL BUSINESS PROCUREMENT CENTER
38 REPRESENTATIVE.—If—

39 (A)(i) a proposed procurement includes in its statement of work
40 a good or service currently being performed by a small business
41 concern; and

1 (ii) the proposed procurement is in a quantity or estimated dol-
2 lar value the magnitude of which renders prime contract participa-
3 tion by small business concerns unlikely;

4 (B) a proposed procurement for construction seeks to package
5 or consolidate discrete construction projects; or

6 (C) a solicitation involves an unnecessary or unjustified bun-
7 dling of contract requirements, as determined by the Adminis-
8 trator;

9 the procurement activity shall, at least 30 days before issuance of the
10 solicitation, provide to the procurement activity's small business pro-
11 curement center representative a copy of the proposed procurement and
12 a statement of explanation.

13 (2) CONTENTS OF STATEMENT OF EXPLANATION.—A statement of
14 explanation under paragraph (1) shall explain—

15 (A) why the proposed acquisition cannot be divided into reason-
16 ably small lots (not less than economic production runs) to permit
17 offers on quantities less than the total requirement;

18 (B) why delivery schedules cannot be established on a realistic
19 basis that will encourage participation by small business concerns
20 to the extent consistent with the actual requirements of the Gov-
21 ernment;

22 (C) why the proposed acquisition cannot be offered so as to
23 make participation by small business concerns likely;

24 (D) why construction cannot be procured as separate discrete
25 projects; or

26 (E) why the procurement activity determined that the bundled
27 contract is necessary and justified.

28 (3) CONCURRENT PROCESS.—The 30-day notification process shall
29 occur concurrently with other processing steps required before issuance
30 of the solicitation.

31 (4) ALTERNATIVE PROCUREMENT METHODS.—Within 15 days after
32 receipt of the proposed procurement and statement of explanation, if
33 the procurement center representative believes that the procurement as
34 proposed will render prime contract participation by small business
35 concerns unlikely, the procurement center representative shall rec-
36 ommend to the procurement activity alternative procurement methods
37 that would increase prime contracting opportunities for small business
38 concerns.

39 (5) FAILURE TO AGREE.—If the Administrator and the contracting
40 procurement agency fail to agree, the Administrator shall appeal the

1 matter to the head of the appropriate Federal agency for determina-
2 tion.

3 (g) FAIR MARKET PRICE.—A contract may not be awarded under this
4 section if the award of the contract would result in a cost to the procure-
5 ment activity that exceeds a fair market price.

6 (h) WHOLESALERS AND RETAILERS.—

7 (1) IN GENERAL.—An otherwise responsible small business concern
8 that is described in paragraph (2) shall not be denied the opportunity
9 to submit and have considered its offer for a procurement contract for
10 the supply of a product to be let under this section solely because the
11 small business concern is other than the manufacturer or processor of
12 the product to be supplied under the contract.

13 (2) REQUIREMENTS.—A small business concern referred to in para-
14 graph (1) is a small business concern that—

15 (A) is primarily engaged in wholesale or retail trade;

16 (B) is a small business concern under the numerical size stand-
17 ard for the North American Industry Classification System code
18 assigned to the contract solicitation on which the offer is being
19 made;

20 (C) is a regular dealer (as defined under section 6510 of title
21 41) in the product to be offered the Government; and

22 (D) represents that the small business concern will supply the
23 product of a domestic small business manufacturer or processor,
24 unless a waiver of this subparagraph is granted—

25 (i) by the Administrator, after reviewing a determination
26 by the contracting officer that no small business manufac-
27 turer or processor can reasonably be expected to offer a prod-
28 uct meeting the specifications (including period for perform-
29 ance) required of an offeror by the solicitation; or

30 (ii) by the Administrator for a product (or class of prod-
31 ucts), after determining that no small business manufacturer
32 or processor is available to participate in the Federal procure-
33 ment market.

34 (i) FORECAST OF CONTRACT OPPORTUNITIES.—

35 (1) IN GENERAL.—An executive agency that reports to the Federal
36 Procurement Data System contract actions with an aggregate value in
37 excess of \$50,000,000 in any fiscal year shall—

38 (A) prepare a forecast of expected contract opportunities or
39 classes of contract opportunities for the next and succeeding fiscal
40 years that small business concerns are capable of performing; and

41 (B) periodically revise the forecast during the following year.

1 (2) CONTENTS.—To the extent that the information is available, a
2 forecast under paragraph (1) shall specify—

3 (A) the approximate number of individual contract opportunities
4 (and the number of opportunities within a class);

5 (B) the approximate dollar value, or range of dollar values, for
6 each contract opportunity or class of contract opportunities;

7 (C) the anticipated time (by fiscal year quarter) for the issuance
8 of a procurement request; and

9 (D) the activity responsible for the award and administration of
10 the contract.

11 (3) SUBMISSION OF FORECASTS.—Not later than 10 days after com-
12 pletion of a forecast under paragraph (1), the head of the executive
13 agency that prepared the forecast shall submit the forecast to—

14 (A) the Director of Small and Disadvantaged Business Utiliza-
15 tion of the executive agency; and

16 (B) the Administrator.

17 (4) SCOPE OF INFORMATION REPORTED.—A forecast submitted
18 under paragraph (3) may be limited to classes of items and services
19 for which there are substantial annual purchases.

20 (5) AVAILABILITY OF FORECASTS.—A forecast submitted under
21 paragraph (3) shall be available to small business concerns.

22 **§ 251102. Placement of contracts by procuring agency**

23 With respect to any work to be performed the amount of which would
24 exceed the maximum amount of a contract for which a surety may be guar-
25 anteed against loss under section 321102 of this title, the contracting pro-
26 curement agency shall, to the extent practicable, place contracts so as to
27 allow more than 1 small business concern to perform the work.

28 **§ 251103. Disabled individuals**

29 (a) DEFINITION OF COMMITTEE.—In this section, the term “Committee”
30 means the Committee for Purchase From People Who Are Blind or Severely
31 Disabled established under section 8502 of title 41.

32 (b) PARTICIPATION.—

33 (1) IN GENERAL.—During fiscal year 1995, public or private organi-
34 zations for the disabled shall be eligible to participate in programs au-
35 thorized under this chapter in an aggregate amount not to exceed
36 \$40,000,000.

37 (2) PROCUREMENT LIST.—None of the amounts authorized for par-
38 ticipation by paragraph (1) may be placed on the procurement list
39 maintained by the Committee under section 8503 of title 41.

40 (c) MONITORING AND EVALUATION.—The Administrator shall monitor
41 and evaluate participation under subsection (b).

1 (d) APPEAL.—

2 (1) FILING.—Not later than 10 days after the announcement of a
3 proposed award of a contract by a Federal agency to a public or private
4 organization for the disabled, a for-profit small business concern that
5 has experienced or is likely to experience severe economic injury as the
6 result of the proposed award may file an appeal of the proposed award
7 with the Administrator.

8 (2) ALLEVIATION OF INJURY.—If a small business concern files an
9 appeal of a proposed award under paragraph (1) and the Adminis-
10 trator, after consultation with the Executive Director of the Committee,
11 finds that the small business concern has experienced or is likely to ex-
12 perience severe economic injury as the result of the proposed award,
13 not later than 30 days after the filing of the appeal, the Administrator
14 shall require each Federal agency having procurement powers to take
15 such action as is appropriate to alleviate economic injury sustained or
16 likely to be sustained by the small business concern.

17 (e) MAXIMUM AMOUNT OF AWARDS.—

18 (1) REPORTING.—A Federal agency having procurement powers
19 shall report to the Office of Federal Procurement Policy each time a
20 contract subject to subsection (b) is entered into and shall include in
21 its report the amount of the next higher bid submitted by a for-profit
22 small business concern.

23 (2) DATA COLLECTION.—The Office of Federal Procurement Policy
24 shall collect data reported under paragraph (1) through the Federal
25 procurement data system and shall report the data to the Adminis-
26 trator.

27 (3) NOTIFICATION.—The Administrator shall notify all Federal
28 agencies having procurement powers when the maximum amount of
29 awards authorized under subsection (b) has been made during any fis-
30 cal year.

31 (f) CONTRACT PERFORMANCE BY DISABLED INDIVIDUALS.—A contract
32 may be awarded under this section only if at least 75 percent of the direct
33 labor performed on each item being produced under the contract in a shel-
34 tered workshop or performed in providing each type of service under the
35 contract by a sheltered workshop is performed by disabled individuals.

36 (g) MULTIYEAR CONTRACTS.—A Federal agency that awards 1 or more
37 contracts to such a public or private organization for the disabled under this
38 section may use multiyear contracts, if appropriate.

1 **§ 251104. Priority for areas of concentrated unemployment**
2 **or underemployment and for labor surplus areas**

3 (a) IN GENERAL.—For purposes of this chapter, priority shall be given
4 to the awarding of contracts and the placement of subcontracts to small
5 business concerns that shall perform a substantial proportion of the produc-
6 tion on the contracts and subcontracts in—

- 7 (1) an area of concentrated unemployment or underemployment; or
8 (2) a labor surplus area.

9 (b) SETASIDES.—

10 (1) IN GENERAL.—Notwithstanding any other provision of law, total
11 labor surplus area setasides under part 331 of title 44, Code of Federal
12 Regulations (or any successor regulation), shall be authorized if the
13 Secretary of Defense specifically determines that there is a reasonable
14 expectation that offers will be obtained from a sufficient number of eli-
15 gible concerns so that awards will be made at reasonable prices.

16 (2) DETERMINATION OF LABOR SURPLUS AREAS.—

17 (A) CONSIDERATION OF PERSONS AVAILABLE FOR EMPLOY-
18 MENT.—To the extent possible, in determining labor surplus areas,
19 consideration shall be given to persons who would be available for
20 employment were suitable employment available.

21 (B) CRITERIA IN EFFECT.—For purposes of this chapter, the
22 determination of a labor surplus area shall be made on the basis
23 of the criteria in effect at the time of the determination, except
24 that any minimum population criteria shall not exceed 25,000.

25 (C) DETERMINATION BY SECRETARY OF LABOR.—A determina-
26 tion of a labor surplus area shall be made by the Secretary of
27 Labor.

28 **§ 251105. Procurement strategies; contract bundling**

29 (a) IN GENERAL.—To the maximum extent practicable, procurement
30 strategies used by a Federal agency having contracting authority shall—

- 31 (1) facilitate the maximum participation of small business concerns
32 as prime contractors, subcontractors, and suppliers;
33 (2) provide opportunities for the participation of small business con-
34 cerns during acquisition planning processes and in acquisition plans;
35 and
36 (3) invite the participation of the appropriate Director of Small and
37 Disadvantaged Business Utilization in acquisition planning processes
38 and provide the Director access to acquisition plans.

39 (b) MARKET RESEARCH.—

40 (1) IN GENERAL.—Before proceeding with an acquisition strategy
41 that could lead to a contract containing consolidated procurement re-

1 quirements, the head of a Federal agency shall conduct market re-
2 search to determine whether consolidation of the requirements is nec-
3 essary and justified.

4 (2) **FACTORS.**—For purposes of paragraph (1), consolidation of the
5 requirements may be determined as being necessary and justified if, as
6 compared with the benefits that would be derived from contracting to
7 meet those requirements if not consolidated, the Federal Government
8 would derive from the consolidation measurably substantial benefits, in-
9 cluding any combination of benefits that, in combination, are measur-
10 ably substantial.

11 (3) **BENEFITS.**—Benefits described in paragraph (2) may include—

12 (A) cost savings;

13 (B) quality improvements;

14 (C) reduction in acquisition cycle times;

15 (D) better terms and conditions; or

16 (E) any other benefit.

17 (4) **REDUCTION OF ADMINISTRATIVE OR PERSONNEL COSTS NOT A**
18 **SUFFICIENT JUSTIFICATION.**—A reduction of administrative or person-
19 nel costs alone shall not be a justification for bundling of contract re-
20 quirements unless the cost savings are expected to be substantial in re-
21 lation to the dollar value of the procurement requirements to be con-
22 solidated.

23 (e) **STRATEGY SPECIFICATIONS.**—If the head of a procuring agency de-
24 termines that a proposed procurement strategy for a procurement involves
25 a substantial bundling of contract requirements, the proposed procurement
26 strategy shall—

27 (1) identify specifically the benefits anticipated to be derived from
28 the bundling of contract requirements;

29 (2) set forth an assessment of the specific impediments to participa-
30 tion by small business concerns as prime contractors that result from
31 the bundling of contract requirements and specify actions designed to
32 maximize small business participation as subcontractors (including sup-
33 pliers) at various tiers under the contract or contracts that are award-
34 ed to meet the requirements; and

35 (3) include a specific determination that the anticipated benefits of
36 the proposed bundled contract justify its use.

37 (d) **CONTRACT TEAMING.**—

38 (1) **IN GENERAL.**—In the case of a solicitation of offers for a bun-
39 dled contract that is issued by the head of a Federal agency, a small
40 business concern may submit an offer that provides for use of a par-
41 ticular team of subcontractors for the performance of the contract.

1 (2) EVALUATION.—The head of the Federal agency shall evaluate
2 the offer in the same manner as other offers, with due consideration
3 to the capabilities of all of the proposed subcontractors.

4 (3) NO EFFECT ON STATUS AS SMALL BUSINESS CONCERN.—Team-
5 ing by a small business concern under this subsection shall not affect
6 the status of the small business concern as a small business concern
7 for any other purpose.

8 (e) ACCESS TO DATA.—

9 (1) DATABASE.—The Administrator shall maintain a database con-
10 taining information regarding—

11 (A) each bundled contract awarded by a Federal agency; and

12 (B) each small business concern that has been displaced as a
13 prime contractor as a result of the award of a bundled contract.

14 (2) ANALYSIS.—For each bundled contract that is to be recompeted
15 as a bundled contract, the Administrator shall determine—

16 (A) the amount of savings and benefits (in accordance with sub-
17 section (b)) achieved under the bundling of contract requirements;
18 and

19 (B) whether such savings and benefits will continue to be real-
20 ized if the contract remains bundled, and whether such savings
21 and benefits would be greater if the procurement requirements
22 were divided into separate solicitations suitable for award to small
23 business concerns.

24 (3) ACCESS TO DATA.—

25 (A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the
26 implementation of this subsection and section 107106 of this title,
27 the Administrator shall have access to information collected
28 through the Federal Procurement Data System.

29 (B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the
30 implementation of this subsection and section 107106 of this title,
31 the head of each procuring agency shall provide, on request of the
32 Administrator, procurement information collected through existing
33 agency data collection sources.

34 (f) BUNDLING ACCOUNTABILITY MEASURES.—

35 (1) TEAMING REQUIREMENTS.—A Federal agency shall include in
36 each solicitation for a multiple award contract above the substantial
37 bundling threshold of the Federal agency a provision soliciting bids
38 from any responsible source, including responsible small business con-
39 cerns and teams or joint ventures of small business concerns.

40 (2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

1 (A) IN GENERAL.—The Federal Acquisition Regulatory Council
2 shall amend the Federal Acquisition Regulation to—

3 (i) establish a Governmentwide policy regarding contract
4 bundling, including regarding the solicitation of teaming and
5 joint ventures under paragraph (1); and

6 (ii) require that the policy established under clause (i) be
7 published on the website of each Federal agency.

8 (B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30
9 days after the date on which the head of a Federal agency submits
10 data certifications to the Administrator for Federal Procurement
11 Policy, the head of the Federal agency shall publish on the website
12 of the Federal agency a list and rationale for any bundled contract
13 for which the Federal agency solicited bids or that was awarded
14 by the Federal agency.

15 **§ 251106. Goals for participation by small business concerns**
16 **in procurement contracts**

17 (a) GOVERNMENTWIDE GOALS.—

18 (1) IN GENERAL.—The President shall annually establish separate
19 Governmentwide goals for procurement contracts awarded to each of
20 the following categories of small business concern:

21 (A) Small business concerns.

22 (B) Qualified HUBZone small business concerns.

23 (C) Small business concerns owned and controlled by service-
24 disabled veterans.

25 (D) Small business concerns owned and controlled by socially
26 and economically disadvantaged individuals.

27 (E) Small business concerns owned and controlled by women.

28 (2) OVERALL GOAL.—The overall Governmentwide goal for participa-
29 tion by small business concerns shall be established at not less than
30 23 percent of the total value of all prime contract awards for each fis-
31 cal year.

32 (3) GOALS FOR SPECIFIC CATEGORIES OF SMALL BUSINESS CON-
33 CERN.—

34 (A) QUALIFIED HUBZONE SMALL BUSINESS CONCERNS.—The
35 Governmentwide goal for participation by qualified HUBZone
36 small business concerns shall be established at not less than 3 per-
37 cent of the total value of all prime contract and subcontract
38 awards for each fiscal year.

39 (B) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY
40 SERVICE-DISABLED VETERANS.—The Governmentwide goal for
41 participation by small business concerns owned and controlled by

1 service-disabled veterans shall be established at not less than 3
2 percent of the total value of all prime contract and subcontract
3 awards for each fiscal year.

4 (C) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY
5 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—
6 The Governmentwide goal for participation by small business con-
7 cerns owned and controlled by socially and economically disadvan-
8 taged individuals shall be established at not less than 5 percent
9 of the total value of all prime contract and subcontract awards for
10 each fiscal year.

11 (D) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY
12 WOMEN.—The Governmentwide goal for participation by small
13 business concerns owned and controlled by women shall be estab-
14 lished at not less than 5 percent of the total value of all prime
15 contract and subcontract awards for each fiscal year.

16 (4) FEDERAL AGENCY GOALS.—

17 (A) IN GENERAL.—A Federal agency shall have an annual goal
18 that presents, for that Federal agency, the maximum practicable
19 opportunity for small business concerns (including qualified HUB-
20 Zone small business concerns, small business concerns owned and
21 controlled by service-disabled veterans, small business concerns
22 owned and controlled by socially and economically disadvantaged
23 individuals, small business concerns owned and controlled by
24 women, and other small business concerns) to participate in the
25 performance of contracts let by the Federal agency.

26 (B) CUMULATIVE FEDERAL AGENCY GOALS TO MEET OR EX-
27 CEED GOVERNMENTWIDE GOAL.—The Administrator and the Ad-
28 ministrators for Federal Procurement Policy shall, when exercising
29 authority under subsection (b), ensure that the cumulative annual
30 prime contract goals for all Federal agencies meet or exceed the
31 annual Governmentwide prime contract goal established by the
32 President under this subsection.

33 (5) PROCUREMENT PROCEDURES.—

34 (A) IN GENERAL.—To facilitate the attainment of a goal for the
35 participation of small business concerns owned and controlled by
36 socially and economically disadvantaged individuals that is estab-
37 lished for a Federal agency under this subsection, the head of the
38 Federal agency may enter into contracts using—

39 (i) less than full and open competition by restricting the
40 competition for such awards to small business concerns owned

1 and controlled by socially and economically disadvantaged in-
2 dividuals; and

3 (ii) a price evaluation preference not in excess of 10 per-
4 cent when evaluating an offer received from a small business
5 concern owned and controlled by socially and economically
6 disadvantaged individuals as the result of an unrestricted so-
7 licitation.

8 (B) APPLICABILITY.—Subparagraph (A) does not apply to the
9 Department of Defense, the Coast Guard, or the National Aero-
10 nautics and Space Administration.

11 (C) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION
12 REGULATION.—

13 (i) IN GENERAL.—The Federal Acquisition Regulation shall
14 provide for uniform implementation of the authority provided
15 in subparagraph (A).

16 (ii) MATTERS TO BE ADDRESSED.—The provisions of the
17 Federal Acquisition Regulation under clause (i) shall in-
18 clude—

19 (I) conditions for the use of advance payments;

20 (II) provisions for contract payment terms that pro-
21 vide for—

22 (aa) accelerated payment for work performed dur-
23 ing the period for contract performance; and

24 (bb) full payment for work performed;

25 (III) guidance on how contracting officers may use, in
26 solicitations for various classes of products or services, a
27 price evaluation preference under subparagraph (A)(ii),
28 to provide a reasonable advantage to small business con-
29 cerns owned and controlled by socially and economically
30 disadvantaged individuals without effectively eliminating
31 any participation of other small business concerns; and

32 (IV)(aa) procedures for a person to request the head
33 of a Federal agency to determine whether the use of
34 competitions restricted to small business concerns owned
35 and controlled by socially and economically disadvan-
36 taged individuals at a contracting activity of the Federal
37 agency has caused a particular industry category to bear
38 a disproportionate share of the contracts awarded to at-
39 tain the goal established for that contracting activity;
40 and

1 (bb) guidance for limiting the use of such restricted
2 competitions in the case of any contracting activity and
3 class of contracts determined in accordance with such
4 procedures to have caused a particular industry category
5 to bear a disproportionate share of the contracts award-
6 ed to attain the goal established for that contracting ac-
7 tivity.

8 (D) TERMINATION.—This paragraph shall cease to be effective
9 at the end of September 30, 2003.

10 (b) FEDERAL AGENCY GOALS.—

11 (1) IN GENERAL.—The Administrator and the head of each Federal
12 agency shall jointly establish goals for the participation by small busi-
13 ness concerns (including qualified HUBZone small business concerns,
14 small business concerns owned and controlled by service-disabled veter-
15 ans, small business concerns owned and controlled by socially and eco-
16 nomically disadvantaged individuals, small business concerns owned
17 and controlled by women, and other small business concerns) in pro-
18 curement contracts of the Federal agency.

19 (2) REQUIREMENTS.—The goals of a Federal agency established
20 under paragraph (1) shall—

21 (A) separately address prime contract awards and subcontract
22 awards for each category of small business concern;

23 (B) present, for that Federal agency, the maximum practicable
24 opportunity for small business concerns (including qualified HUB-
25 Zone small business concerns, small business concerns owned and
26 controlled by service-disabled veterans, small business concerns
27 owned and controlled by socially and economically disadvantaged
28 individuals, small business concerns owned and controlled by
29 women, and other small business concerns) to participate in the
30 performance of contracts let by the Federal agency; and

31 (C) realistically reflect the potential of qualified HUBZone
32 small business concerns, small business concerns owned and con-
33 trolled by service-disabled veterans, small business concerns owned
34 and controlled by socially and economically disadvantaged individ-
35 uals, small business concerns owned and controlled by women, and
36 other small business concerns to perform such contracts and to
37 perform subcontracts under such contracts.

38 (3) DISAGREEMENT.—If the Administrator and the head of a Fed-
39 eral agency fail to agree on established goals, the disagreement shall
40 be submitted to the Administrator for Federal Procurement Policy for
41 final determination.

1 (4) EXPANSION OF PARTICIPATION.—

2 (A) IN GENERAL.—After establishing goals under this sub-
3 section for a fiscal year, the head of a Federal agency shall de-
4 velop a plan for achieving the goals at both the prime contract and
5 the subcontract level.

6 (B) RESPONSIBILITIES.—A plan under subparagraph (A) shall
7 apportion responsibilities among the Federal agency's acquisition
8 executives and officials.

9 (C) PARTICIPATION FROM EACH INDUSTRY CATEGORY.—In es-
10 tablishing goals under this subsection, the head of a Federal agen-
11 cy shall make a consistent effort to annually expand participation
12 by small business concerns from each industry category in pro-
13 curement contracts and subcontracts of the Federal agency, in-
14 cluding participation by qualified HUBZone small business con-
15 cerns, small business concerns owned and controlled by service-dis-
16 abled veterans, small business concerns owned and controlled by
17 socially and economically disadvantaged individuals, and small
18 business concerns owned and controlled by women.

19 (D) CONSIDERATIONS.—The head of a Federal agency, in at-
20 tempting to attain participation under subparagraph (A), shall
21 consider—

22 (i) contracts awarded as the result of unrestricted competi-
23 tion; and

24 (ii) contracts awarded after competition restricted to eligi-
25 ble small business concerns under this chapter and under the
26 business development program.

27 (E) COMMUNICATION BY PROCURING EMPLOYEES AND PRO-
28 GRAM MANAGERS OF IMPORTANCE OF ACHIEVING SMALL BUSINESS
29 GOALS.—

30 (i) IN GENERAL.—A procurement employee or program
31 manager described in clause (ii) shall communicate to the
32 subordinates of the procurement employee or program man-
33 ager the importance of achieving small business goals estab-
34 lished under subparagraph (A).

35 (ii) PROCUREMENT EMPLOYEES AND PROGRAM MAN-
36 AGERS.—A procurement employee or program manager re-
37 ferred to in clause (i) is a senior procurement executive, sen-
38 ior program manager, or Director of Small and Disadvan-
39 taged Business Utilization of a Federal agency having con-
40 tracting authority.

1 (F) RESPONSIBILITY FOR ACHIEVING SMALL BUSINESS
2 GOALS.—

3 (i) DEFINITION OF RESPONSIBLE FOR ACQUISITION.—In
4 this subparagraph, the term “responsible for acquisition”,
5 with respect to a member of the senior executive service or
6 other senior official, refers to a member of the senior execu-
7 tive service or other senior official who—

8 (I) acquires services or supplies;

9 (II) directs Federal agency organizations to acquire
10 services or supplies; or

11 (III) oversees acquisition officials, including program
12 managers, contracting officers, and other acquisition
13 workforce personnel responsible for formulating and ap-
14 proving acquisition strategies and plans.

15 (ii) STEPS BY FEDERAL AGENCY HEADS TO ENSURE THAT
16 MEMBERS OF THE SENIOR EXECUTIVE SERVICE RESPONSIBLE
17 FOR ACQUISITION, OTHER SENIOR OFFICIALS RESPONSIBLE
18 FOR ACQUISITION, AND OTHER MEMBERS OF THE SENIOR EX-
19 ECUTIVE SERVICE ASSUME RESPONSIBILITY.—The head of a
20 Federal agency shall take steps to ensure that members of
21 the senior executive service (as defined under section 3396(a)
22 of title 5) responsible for acquisition, other senior officials re-
23 sponsible for acquisition, and other members of the senior ex-
24 ecutive service, as appropriate, assume responsibility for the
25 Federal agency’s success in achieving small business contract-
26 ing goals and percentages by—

27 (I) promoting responsiveness to small business con-
28 cerns;

29 (II) communicating the importance of achieving the
30 Federal agency’s small business contracting goals; and

31 (III) encouraging awareness of, outreach toward, and
32 support of small business concerns.

33 (c) GOALING GUIDELINE.—The Administrator shall review and revise the
34 Goaling Guidelines for the Small Business Preference Programs for Prime
35 and Subcontract Federal Procurement Goals and Achievements to the ex-
36 tent necessary to ensure that—

37 (1) Federal agency subcontracting goals are established on the basis
38 of realistically achievable improvements to levels of subcontracting rath-
39 er than on the basis of an average of previous years’ subcontracting
40 performance;

1 (2) Federal agency contracting and subcontracting goals are estab-
2 lished in a manner that does not exclude categories of contracts on the
3 basis of—

4 (A) the type of goods or services for which the Federal agency
5 contracts; or

6 (B) in the case of a contract subject to competitive procedures
7 under chapter 33 of title 41—

8 (i) whether or not funding for the contract is made directly
9 available to the Federal agency by an appropriations Act or
10 is made available by reimbursement from another agency or
11 account; or

12 (ii) whether or not a contract is subject to the Federal Ac-
13 quisition Regulation; and

14 (3) if a Federal agency contracting goal or subcontracting goal is es-
15 tablished at a level lower than the Governmentwide goal for small busi-
16 ness concerns or the relevant category of small business concern, the
17 Administrator documents the basis for the decision to establish the
18 lower goal.

19 **§ 251107. No effect on certain small business setasides**

20 (a) IN GENERAL.—Nothing in this chapter or any other provision of law
21 precludes exclusive small business setasides for procurements of architec-
22 tural and engineering services, research, development, test, and evaluation.

23 (b) AUTHORITY.—A Federal agency may develop setasides described in
24 subsection (a) to further the interests of small business in the areas de-
25 scribed in that subsection.

26 **§ 251108. Mandatory contract reservation**

27 (a) IN GENERAL.—A contract for the purchase of a good or service that
28 has an anticipated value greater than \$2,500 but not greater than \$100,000
29 shall be reserved exclusively for small business concerns unless the contract-
30 ing officer is unable to obtain offers from 2 or more small business concerns
31 that are—

32 (1) competitive with market prices; and

33 (2) competitive with regard to the quality and delivery of the good
34 or service being purchased.

35 (b) CONSIDERATION OF TIMELY OFFERS.—In carrying out subsection
36 (a), a contracting officer shall consider a responsive offer timely received
37 from an eligible small business concern offeror.

38 (c) EFFECT OF SECTION.—Nothing in this section precludes an award of
39 a contract with a value not greater than \$100,000 under—

40 (1) the business development program;

41 (2) section 2323 of title 10; or

1 (3) section 251106(a)(5) of this title.

2 **§ 251109. Offices of Small and Disadvantaged Business Utili-**
3 **zation**

4 (a) DEFINITIONS.—In this section:

5 (1) DIRECTOR.—The term “Director” means the Director of Small
6 and Disadvantaged Business Utilization of a Federal agency appointed
7 under subsection (c).

8 (2) OFFICE.—The term “Office” means the Office of Small and Dis-
9 advantaged Business Utilization of a Federal agency established by
10 subsection (b).

11 (b) ESTABLISHMENT OF OFFICES.—There is established in each Federal
12 agency having procurement powers an office to be known as the Office of
13 Small and Disadvantaged Business Utilization.

14 (c) DIRECTOR.—

15 (1) IN GENERAL.—The management of an Office shall be vested in
16 an officer or employee of the Federal agency, appointed by the head
17 of the Federal agency, who shall be known as the Director of Small
18 and Disadvantaged Business Utilization of the Federal agency.

19 (2) QUALIFICATIONS.—The Director shall be an individual with ex-
20 perience serving in any combination of the following roles:

21 (A) Program manager, deputy program manager, or assistant
22 program manager for Federal acquisition program.

23 (B) Chief engineer, systems engineer, assistant engineer, or
24 product support manager for Federal acquisition program.

25 (C) Federal contracting officer.

26 (D) Small business technical advisor.

27 (E) Contracts administrator for Federal Government contracts.

28 (F) Attorney specializing in Federal procurement law.

29 (G) Small business liaison officer.

30 (H) Officer or employee who managed Federal Government con-
31 tracts for a small business.

32 (I) Individual whose primary responsibilities were for the func-
33 tions and duties of—

34 (i) this chapter;

35 (ii) division F and G; or

36 (iii) section 241119 of this title.

37 (3) POSITION.—The Director shall be appointed to a position that
38 is a Senior Executive Service position (as defined under section
39 3132(a) of title 5), except that, for a Federal agency in which the posi-
40 tions of Chief Acquisition Officer and senior procurement executive (as
41 those terms are defined under section 241119(a) of this title) are not

1 Senior Executive Service positions, the Director may be appointed to
2 a position compensated at not less than the minimum rate of basic pay
3 payable for grade GS-15 of the General Schedule under section 5332
4 of title 5 (including comparability payments under section 5304 of that
5 title).

6 (4) LINE OF AUTHORITY.—

7 (A) IN GENERAL.—The Director for a Federal agency shall be
8 responsible (including responsibility with respect to performance
9 appraisals) only to, and shall report directly to, the head or deputy
10 head of the Federal agency.

11 (B) DEPARTMENT OF DEFENSE.—The Director for the Depart-
12 ment of Defense shall be responsible (including responsibility with
13 respect to performance appraisals) only to, and shall report di-
14 rectly to, the Secretary of Defense or a designee of the Secretary.

15 (5) EXCLUSIVE DUTIES.—The Director shall carry out exclusively
16 the duties enumerated in this subtitle and subtitle I, and, while holding
17 the position of Director, shall not hold any other title, position, or re-
18 sponsibility, except as necessary to carry out responsibilities under this
19 section.

20 (d) GENERAL RESPONSIBILITIES.—The Director for a Federal agency
21 shall be responsible for the implementation and execution of the functions
22 and duties under this chapter and divisions F and G that relate to the Fed-
23 eral agency.

24 (e) DUTIES.—The Director for a Federal agency—

25 (1) shall—

26 (A) identify proposed solicitations that involve significant bun-
27 dling of contract requirements; and

28 (B) work with acquisition officials of the Federal agency and
29 the Administrator to revise the procurement strategies for pro-
30 posed solicitations as appropriate to increase the probability of
31 participation by small business concerns as prime contractors or
32 to facilitate participation by small business concerns as sub-
33 contractors and suppliers, if a solicitation for a bundled contract
34 is to be issued;

35 (2) shall assist small business concerns in obtaining payments, re-
36 quired late payment interest penalties, or information regarding pay-
37 ments due to small business concerns from a Federal agency or a con-
38 tractor, in conformity with chapter 39 of title 31 or any other protec-
39 tion for contractors or subcontractors (including suppliers) that is in-
40 cluded in the Federal Acquisition Regulation or any individual agency
41 supplement to the Governmentwide regulation;

1 (3) shall review and advise the Federal agency on any decision to
2 convert an activity performed by a small business concern to an activity
3 performed by a Federal employee;

4 (4) shall provide to the Chief Acquisition Officer and senior procure-
5 ment executive of the Federal agency advice and comments on acquisi-
6 tion strategies, market research, and justifications relating to section
7 241119 of this title;

8 (5) may provide training to small business concerns and contract
9 specialists, to the extent that the training does not interfere with the
10 Director's carrying out of other responsibilities under this section; and

11 (6) shall receive unsolicited proposals and, when appropriate, forward
12 a proposal to personnel of the activity responsible for reviewing the pro-
13 posal.

14 (f) SUPERVISORY AUTHORITY.—The Director for a Federal agency shall
15 have supervisory authority over personnel of the Federal agency to the ex-
16 tent that the functions and duties of those personnel relate to functions and
17 duties under this chapter and divisions F and G.

18 (g) SMALL BUSINESS TECHNICAL ADVISERS.—

19 (1) ASSIGNMENT.—The Director for a Federal agency shall assign
20 a small business technical adviser to each office to which the Adminis-
21 trator assigns a procurement center representative.

22 (2) QUALIFICATIONS.—A small business technical adviser—

23 (A) shall be a full-time employee of the procurement activity;
24 and

25 (B) shall be well qualified, technically trained, and familiar with
26 the goods or services purchased at the procurement activity.

27 (3) PRINCIPAL DUTY.—The principal duty of a small business tech-
28 nical adviser shall be to assist the SBA procurement center representa-
29 tive in carrying out duties and functions relating to this chapter and
30 divisions F and G.

31 (h) COOPERATION AND CONSULTATION.—The Director for a Federal
32 agency shall cooperate, and consult on a regular basis, with the Adminis-
33 trator with respect to carrying out the functions and duties described in
34 subsection (d).

35 (i) RECOMMENDATIONS CONCERNING AWARD OF CONTRACTS.—

36 (1) IN GENERAL.—The Director for a Federal agency shall make
37 recommendations to contracting officers concerning whether a particu-
38 lar contract requirement should be awarded pursuant to section
39 251101 of this title, division F of this subtitle, or section 2323 of title
40 10.

1 (2) CONSIDERATIONS.—A recommendation under paragraph (1)
2 shall be made with due regard to the requirements of sections 251110
3 and 251112 of this title.

4 (3) DOCUMENTATION OF FAILURE TO ACCEPT RECOMMENDATION.—
5 The failure of a contracting officer to accept a recommendation under
6 paragraph (1) shall be documented and included within the appropriate
7 contract file.

8 (j) APPLICABILITY OF SECTION.—This section does not apply to SBA.

9 **§ 251110. Procurement center representatives**

10 (a) DEFINITION OF MAJOR PROCUREMENT CENTER.—In this section, the
11 term “major procurement center” means a procurement center that, in the
12 opinion of the Administrator, purchases substantial dollar amounts of goods
13 and services (including goods or services that are commercially available).

14 (b) ASSIGNMENT OF PROCUREMENT CENTER REPRESENTATIVES.—The
15 Administrator shall assign to each major procurement center a procurement
16 center representative with such assistance as is appropriate.

17 (c) ACTIVITIES.—A procurement center representative may—

18 (1)(A) attend any provisioning conference or similar evaluation ses-
19 sion during which determinations are made concerning whether require-
20 ments are to be procured through other than full and open competition;
21 and

22 (B) make recommendations with respect to those requirements to the
23 members of the conference or session;

24 (2)(A) review, at any time, barriers to participation by small busi-
25 ness concerns in Federal contracting imposed on goods and services
26 through acquisition method coding or similar procedures; and

27 (B) recommend to personnel of the appropriate activity the prompt
28 reevaluation of such barriers;

29 (3)(A) review barriers to participation by small business concerns in
30 Federal contracting arising out of restrictions on the rights of the
31 United States in technical data; and

32 (B) when appropriate, recommend that personnel of the appropriate
33 activity initiate a review of the validity of such an asserted restriction;

34 (4) review any bundled or consolidated solicitation or contract in ac-
35 cordance with this subtitle;

36 (5) have access to procurement records and other data of the major
37 procurement center commensurate with the level of the procurement
38 center representative’s approved security clearance classification, the
39 data to be provided on request in electronic format, if available;

40 (6)(A) receive unsolicited proposals from small business concerns;
41 and

1 (B) transmit each proposal to personnel of the activity of a Federal
2 agency who are responsible for reviewing such proposals, which person-
3 nel shall furnish the procurement center representative with informa-
4 tion regarding the disposition of the proposal;

5 (7) consult with the Director of Small and Disadvantaged Business
6 Utilization of that Federal agency and the agency personnel described
7 in subsections (f) and (g) of section 251109 of this title with regard
8 to agency insourcing decisions covered by subsection (e)(3) of that sec-
9 tion;

10 (8) advocate for the maximum practicable utilization of small busi-
11 ness concerns in Federal contracting, including by advocating against
12 the consolidation or bundling of contract requirements when not justi-
13 fied; and

14 (9) carry out any other responsibility assigned by the Administrator.

15 (d) APPEAL OF FAILURE TO ACT FAVORABLY ON RECOMMENDATION.—

16 (1) IN GENERAL.—A procurement center representative may appeal
17 the failure to act favorably on any recommendation made under sub-
18 section (c).

19 (2) PROCEDURE.—An appeal under paragraph (1) shall be filed and
20 processed in the same manner and shall be subject to the same condi-
21 tions and limitations as an appeal filed by the Administrator under sec-
22 tion 251101(f)(5) of this title.

23 (e) SMALL BUSINESS TECHNICAL ADVISERS.—

24 (1) IN GENERAL.—The Administrator shall assign and co-locate at
25 least 2 small business technical advisers to each major procurement
26 center in addition to such other advisers as may be authorized from
27 time to time.

28 (2) DUTIES.—The sole duties of small business technical advisers as-
29 signed under paragraph (1) shall be—

30 (A) to assist the procurement center representative for the cen-
31 ter to which the small business technical advisers are assigned in
32 carrying out the functions described in subsection (c); and

33 (B) to assist the procurement center representative for each of-
34 fice to which the Administrator assigns a procurement center rep-
35 resentative under section 251109(g) of this title.

36 (f) STATUS; QUALIFICATIONS.—A procurement center representative—

37 (1) shall be a full-time employee of SBA;

38 (2) shall be fully qualified, technically trained, and familiar with the
39 goods and services procured by the major procurement center to which
40 the procurement center representative is assigned; and

1 (3) shall have a Level III Federal Acquisition Certification in Con-
2 tracting (or any successor certification) or the equivalent Department
3 of Defense certification, except that any person serving in such a posi-
4 tion on January 2, 2013, may continue to serve in that position for
5 a period of 5 years without the required certification.

6 (g) COMPENSATION.—The Administrator shall establish personnel posi-
7 tions for procurement representatives assigned under this section that are
8 classified at a grade level of the General Schedule sufficient to attract and
9 retain highly qualified personnel.

10 (h) TRAINING.—

11 (1) IN GENERAL.—At such times as the Administrator considers ap-
12 propriate, a procurement center representative shall conduct famil-
13 iarization sessions for contracting officers and other appropriate per-
14 sonnel of the major procurement center to which the procurement cen-
15 ter representative is assigned.

16 (2) PURPOSE.—A familiarization session shall acquaint the partici-
17 pants with, and instruct the participants in methods designed to fur-
18 ther the purposes of, this section.

19 (3) LIMITATION.—A procurement center representative may provide
20 training under paragraph (1) only to the extent that the training does
21 not interfere with the carrying out by the procurement center rep-
22 resentative of other activities under this section.

23 (i) ANNUAL BRIEFING AND REPORT.—

24 (1) IN GENERAL.—A procurement center representative shall prepare
25 and personally deliver an annual briefing and report to the head of the
26 major procurement center to which the procurement center representa-
27 tive is assigned.

28 (2) CONTENTS.—A briefing and report under paragraph (1) shall—

29 (A) detail the past and planned activities of the procurement
30 center representative; and

31 (B) contain such recommendations for improvement in the oper-
32 ation of the major procurement center as may be appropriate.

33 (3) RESPONSE.—The head of the major procurement center shall—

34 (A) personally receive the briefing and report; and

35 (B) not later than 60 calendar days after receipt, respond, in
36 writing, to each recommendation made by the procurement center
37 representative.

38 (j) STANDARDS FOR MEASURING COST SAVINGS FROM PROCUREMENT
39 CENTER REPRESENTATIVES.—The Administrator and the Comptroller Gen-
40 eral shall jointly establish standards for measuring—

1 (1) cost savings achieved through the efforts of procurement center
2 representatives; and

3 (2) the extent to which competition has been increased as a result
4 of those efforts.

5 **§ 251111. Department of Defense, Coast Guard, and National**
6 **Aeronautics and Space Administration contract**
7 **goals**

8 A Federal agency subject to the requirements of section 2323 of title 10
9 shall, when implementing those requirements—

10 (1) establish policies and procedures that ensure that there will be
11 no reduction in the number or dollar value of contracts awarded under
12 this chapter or division F to achieve any goal or other program objec-
13 tive; and

14 (2) ensure that those requirements will not alter or change the pro-
15 curement process used to implement this chapter, chapter 231, or
16 chapter 233.

17 **§ 251112. Actions by procurement center representatives to**
18 **ensure compliance**

19 A procurement center representative assigned under section 251109 or
20 251110 of this title, in addition to such other duties as the Administrator
21 may assign, shall—

22 (1) monitor the performance of the procurement activities to which
23 the procurement center representative is assigned to ascertain the de-
24 gree of compliance with the requirements of section 251111 of this
25 title;

26 (2) report to the procurement center representative's immediate su-
27 pervisors all instances of noncompliance with those requirements; and

28 (3) increase, insofar as possible, the number and dollar value of pro-
29 curements that may be used for the programs established under this
30 chapter, division F of this subtitle, and section 2323 of title 10.

31 **§ 251113. Limitations on subcontracting**

32 A concern shall not be awarded a contract under section 251101 of this
33 title as a small business concern unless the concern agrees to satisfy the
34 requirements of section 291107 of this title.

35 **§ 251114. Multiple award contracts**

36 The Administrator for Federal Procurement Policy and the Adminis-
37 trator, in consultation with the Administrator of General Services, shall by
38 regulation establish guidance under which Federal agencies may—

39 (1) set aside 1 or more parts of a multiple award contract for small
40 business concerns, including the subcategories of small business con-
41 cerns identified in section 251106(b) of this title;

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1 (2) notwithstanding the fair opportunity requirements under section
 2 2304e(b) of title 10 and section 4106(e) of title 41, set aside orders
 3 placed against multiple award contracts for small business concerns, in-
 4 cluding the subcategories of small business concerns identified in sec-
 5 tion 251106(b) of this title; and

6 (3) reserve 1 or more contract awards for small business concerns
 7 under full and open multiple award procurements, including the sub-
 8 categories of small business concerns identified in section 251106(b) of
 9 this title.

10 **Chapter 253—HUBZone Program**

Sec.

- 253101. Definitions.
- 253102. Establishment of HUBZone program.
- 253103. Sole source preference.
- 253104. Setaside preference.
- 253105. Appeal of decision not to award contract.
- 253106. Price evaluation preference in full and open competition.
- 253107. Relationship to other contracting preferences.
- 253108. Verification of eligibility.
- 253109. Mentor-protégé program.
- 253110. Regulations.
- 253111. List of qualified HUBZone small business concerns.
- 253112. Penalties.

11 **§ 253101. Definitions**

12 In this chapter:

13 (1) **BASE CLOSURE AREA.**—The term “base closure area” means
 14 land within the external boundaries of a military installation that was
 15 closed through a privatization process under—

16 (A) the Defense Base Closure and Realignment Act of 1990
 17 (part A of title XXIX of division B of Public Law 101–510; 10
 18 U.S.C. 2687 note);

19 (B) title II of the Defense Authorization Amendments and Base
 20 Closure and Realignment Act (Public Law 100–526; 10 U.S.C.
 21 2687 note);

22 (C) section 2687 of title 10; or

23 (D) any other provision of law authorizing or directing the Sec-
 24 retary of Defense or the Secretary of a military department to dis-
 25 pose of real property at the military installation for purposes relat-
 26 ing to base closures or redevelopment, while retaining the author-
 27 ity to enter into a leaseback of all or a portion of the property
 28 for military use.

29 (2) **FULL AND OPEN COMPETITION.**—The term “full and open com-
 30 petition” has the meaning given the term in section 107 of title 41.

31 (3) **HISTORICALLY UNDERUTILIZED BUSINESS ZONE.**—

32 (A) **IN GENERAL.**—The term “historically underutilized business
 33 zone” means an area located within 1 or more—

- 1 (i) qualified census tracts;
2 (ii) qualified nonmetropolitan counties;
3 (iii) areas of land within the external boundaries of an In-
4 dian reservation;
5 (iv) redesignated areas; or
6 (v) base closure areas.

7 (B) HUBZONE STATUS TIMELINE AND COMMENCEMENT.—

8 (i) 2004 ENACTMENT.—A base closure area that has un-
9 dergone final closure shall be treated as a HUBZone for a
10 period of 5 years.

11 (ii) 2013 ENACTMENT.—

12 (I) DEFINITION OF COVERED BASE CLOSURE AREA.—

13 In this clause, the term “covered base closure area”
14 means a base closure area that, on or before January 2,
15 2013, was treated as a HUBZone for purposes of the
16 Small Business Act (15 U.S.C. 631 et seq.) pursuant to
17 section 152(a)(2) of the Small Business Reauthorization
18 and Manufacturing Assistance Act of 2004 (15 U.S.C.
19 632 note).

20 (II) TREATMENT AS HUBZONE.—

21 (aa) IN GENERAL.—Subject to item (bb), a cov-
22 ered base closure area shall be treated as a HUB-
23 Zone for purposes of this subtitle and subtitle II
24 during the 5-year period beginning on January 2,
25 2013.

26 (bb) LIMITATION.—The total period of time that
27 a covered base closure area is treated as a HUB-
28 Zone for purposes of this subtitle and subtitle II
29 pursuant to this clause and clause (i) shall not ex-
30 ceed 5 years.

31 (4) HUBZONE.—The term “HUBZone” means a historically under-
32 utilized business zone.

33 (5) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone
34 small business concern” means—

35 (A) a small business concern that is at least 51 percent owned
36 and controlled by United States citizens;

37 (B) a small business concern that is—

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

1 (ii) a direct or indirect subsidiary corporation, joint ven-
2 ture, or partnership of an Alaska Native Corporation qualify-
3 ing under section 29(e)(1) of the Alaska Native Claims Set-
4 tlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint
5 venture, or partnership is owned and controlled by Natives
6 (as determined under section 29(e)(2) of the Alaska Native
7 Claims Settlement Act (43 U.S.C. 1626(e)(2)));

8 (C) a small business concern—

9 (i) that is wholly owned by 1 or more Indian tribal govern-
10 ments, or by a corporation that is wholly owned by 1 or more
11 Indian tribal governments; or

12 (ii) that is owned in part by 1 or more Indian tribal gov-
13 ernments, or by a corporation that is wholly owned by 1 or
14 more Indian tribal governments, if all other owners are either
15 United States citizens or small business concerns;

16 (D) a small business concern that is—

17 (i) wholly owned by a community development corporation
18 that has received financial assistance under part 1 of sub-
19 chapter A of the Community Economic Development Act of
20 1981 (42 U.S.C. 9805 et seq.); or

21 (ii) owned in part by 1 or more community development
22 corporations, if all other owners are either United States citi-
23 zens or small business concerns; or

24 (E) a small business concern that is—

25 (i) a small agricultural cooperative organized or incor-
26 porated in the United States;

27 (ii) wholly owned by 1 or more small agricultural coopera-
28 tives organized or incorporated in the United States; or

29 (iii) owned in part by 1 or more small agricultural coopera-
30 tives organized or incorporated in the United States, if all
31 owners are small business concerns or United States citizens.

32 (6) PROGRAM.—The term “program” means the HUBZone program.

33 (7) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term
34 “qualified HUBZone small business concern” means a small business
35 concern that certifies in writing to the Administrator (or with respect
36 to which the Administrator otherwise determines, based on information
37 submitted to the Administrator by the small business concern, or based
38 on certification procedures established under section 253110 of this
39 title) that—

40 (A) it is a HUBZone small business concern—

1 (i) under subparagraph (A), (B), (C), (D), or (E) of para-
2 graph (5), and its principal office is located in a HUBZone
3 and not fewer than 35 percent of its employees reside in a
4 HUBZone; or

5 (ii) under paragraph (5)(C), and not fewer than 35 percent
6 of its employees engaged in performing a contract awarded to
7 the small business concern on the basis of a preference pro-
8 vided under the HUBZone program reside within any Indian
9 reservation governed by 1 or more of the tribal government
10 owners, or reside within any HUBZone adjoining any such
11 Indian reservation;

12 (B) the small business concern will attempt to maintain the ap-
13 plicable employment percentage under subparagraph (A) during
14 the performance of any contract awarded to the small business
15 concern on the basis of a preference provided under section
16 253103, 253104, or 253106 of this title; and

17 (C) with respect to any subcontract entered into by the small
18 business concern under a contract awarded to the small business
19 concern under this chapter, the small business concern will ensure
20 that the requirements of section 299107 of this title are satisfied.

21 (8) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified
22 nonmetropolitan county” means a county—

23 (A) that was not located in a metropolitan statistical area (as
24 defined in section 143(k)(2)(B) of the Internal Revenue Code of
25 1986 (26 U.S.C. 143(k)(2)(B))) at the time of the most recent
26 census taken for purposes of selecting qualified census tracts
27 under section 42(d)(5)(B)(ii) of the Internal Revenue Code of
28 1986 (26 U.S.C. 42(d)(5)(B)(ii)); and

29 (B) in which—

30 (i) the median household income is less than 80 percent of
31 the nonmetropolitan State median household income, based
32 on the most recent data available from the Bureau of the
33 Census of the Department of Commerce;

34 (ii) the unemployment rate is not less than 140 percent of
35 the average unemployment rate for the United States or for
36 the State in which the county is located, whichever is less,
37 based on the most recent data available from the Secretary
38 of Labor; or

39 (iii) there is located a difficult development area, as des-
40 ignated by the Secretary of Housing and Urban Development
41 in accordance with section 42(d)(5)(B)(iii) of the Internal

1 Revenue Code of 1986 (26 U.S.C. 42(d)(5)(B)(iii)), within
2 Alaska, Hawaii, or any territory or possession of the United
3 States outside the 48 contiguous States.

4 (9) REDESIGNATED AREA.—

5 (A) IN GENERAL.—Subject to subparagraph (B), the term “re-
6 designated area” means—

7 (i) a census tract that was, but ceases to be, a qualified
8 census tract; and

9 (ii) a nonmetropolitan county that was, but ceases to be,
10 a qualified nonmetropolitan county.

11 (B) LIMITATION.—A census tract or nonmetropolitan county de-
12 scribed in subparagraph (A) shall cease to be a redesignated area
13 on the later of—

14 (i) the date on which the Bureau of the Census publicly re-
15 leases the 1st results from the 2010 decennial census; or

16 (ii) 3 years after the date on which the census tract or non-
17 metropolitan county ceases to be a qualified census tract or
18 qualified nonmetropolitan county.

19 **§ 253102. Establishment of HUBZone program**

20 There is established within SBA a program to be carried out by the Ad-
21 ministrator, to be known as the HUBZone program, to provide for Federal
22 contracting assistance to qualified HUBZone small business concerns in ac-
23 cordance with this chapter.

24 **§ 253103. Sole source preference**

25 A contracting officer may award a sole source contract under the pro-
26 gram to a qualified HUBZone small business concern if—

27 (1) the contracting officer determines that the qualified HUBZone
28 small business concern is a responsible contractor with respect to per-
29 formance of the contract opportunity;

30 (2) the contracting officer does not have a reasonable expectation
31 that 2 or more qualified HUBZone small business concerns will submit
32 offers for the contracting opportunity;

33 (3) the anticipated award price of the contract (including options)
34 will not exceed—

35 (A) \$5,000,000, in the case of a contract opportunity assigned
36 a North American Industry Classification System code for manu-
37 facturing; or

38 (B) \$3,000,000, in the case of any other contract opportunity;
39 and

40 (4) in the estimation of the contracting officer, the contract award
41 can be made at a fair and reasonable price.

1 **§ 253104. Setaside preference**

2 A contract opportunity may be awarded under the program on the basis
3 of competition restricted to qualified HUBZone small business concerns if
4 the contracting officer has a reasonable expectation that—

5 (1) not fewer than 2 qualified HUBZone small business concerns will
6 submit offers; and

7 (2) the award can be made at a fair market price.

8 **§ 253105. Appeal of decision not to award contract**

9 Not later than 5 days after the date on which the Administrator is noti-
10 fied of a decision by a contracting officer of a Federal agency not to award
11 a contract opportunity under the program to a qualified HUBZone small
12 business concern, the Administrator may notify the contracting officer of
13 the intent to appeal the contracting officer's decision, and within 15 days
14 after that date the Administrator may file a written request for reconsider-
15 ation of the contracting officer's decision with the head of the Federal agen-
16 cy.

17 **§ 253106. Price evaluation preference in full and open com-**
18 **petition**

19 (a) IN GENERAL.—Subject to subsection (b), in a case in which a con-
20 tract is to be awarded on the basis of full and open competition, the price
21 offered by a qualified HUBZone small business concern shall be deemed to
22 be lower than the price offered by another offeror (other than another small
23 business concern) if the price offered by the qualified HUBZone small busi-
24 ness concern is not more than 10 percent higher than the price offered by
25 the otherwise lowest, responsive, and responsible offeror.

26 (b) AGRICULTURAL COMMODITIES.—

27 (1) IN GENERAL.—In the case of a purchase by the Secretary of Ag-
28 riculture of agricultural commodities, the price evaluation preference
29 shall be—

30 (A) 10 percent for the portion of a contract to be awarded that
31 is not greater than 25 percent of the total volume being procured
32 for each agricultural commodity in a single invitation;

33 (B) 5 percent for the portion of a contract to be awarded that
34 is greater than 25 percent, but not greater than 40 percent, of the
35 total volume being procured for each agricultural commodity in a
36 single invitation; and

37 (C) zero, for the portion of a contract to be awarded that is
38 greater than 40 percent of the total volume being procured for
39 each agricultural commodity in a single invitation.

40 (2) TREATMENT OF PREFERENCE.—A contract awarded to a quali-
41 fied HUBZone small business concern under a preference described in

1 paragraph (1) shall not be counted toward the fulfillment of any re-
2 quirement partially set aside for competition restricted to small busi-
3 ness concerns.

4 (3) INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price
5 evaluation preference for a purchase of an agricultural commodity by
6 the Secretary of Agriculture for export operations through an inter-
7 national food aid program administered by the Farm Service Agency
8 shall be 5 percent on the 1st portion of a contract to be awarded that
9 is not greater than 20 percent of the total volume of each agricultural
10 commodity being procured in a single invitation.

11 **§ 253107. Relationship to other contracting preferences**

12 A procurement may not be made from a source on the basis of a pref-
13 erence under the program if the procurement would otherwise be made from
14 a different source under—

15 (1) section 4124 or 4125 of title 18; or

16 (2) chapter 85 of title 41.

17 **§ 253108. Verification of eligibility**

18 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall
19 establish procedures relating to—

20 (1) the filing, investigation, and disposition by the Administrator of
21 any challenge to the eligibility of a small business concern to receive
22 assistance under the program (including a challenge, filed by an inter-
23 ested party, relating to the veracity of a certification made or informa-
24 tion provided to the Administrator by a small business concern under
25 section 253101(7) of this title); and

26 (2) verification by the Administrator of the accuracy of any certifi-
27 cation made or information provided to the Administrator by a small
28 business concern under section 253101(7) of this title.

29 (b) EXAMINATIONS.—The procedures established under subsection (a)
30 may provide for program examinations (including random program examina-
31 tions) by the Administrator of any small business concern making a certifi-
32 cation or providing information to the Administrator under section
33 253101(7) of this title.

34 (c) PROVISION OF DATA.—On the request of the Administrator, the Sec-
35 retary of Labor, the Secretary of Housing and Urban Development, and the
36 Secretary of the Interior (or the Assistant Secretary for Indian Affairs)
37 shall promptly provide to the Administrator such information as the Admin-
38 istrator determines to be necessary to carry out this section.

1 **§ 253109. Mentor-protégé program**

2 The Administrator may establish a mentor-protégé program for HUB-
3 Zone small business concerns modeled on the mentor-protégé program for
4 small business concerns participating in the business development program.

5 **§ 253110. Regulations**

6 The Administrator shall by regulation establish procedures for the certifi-
7 cation of a small business concern as a qualified HUBZone small business
8 concern.

9 **§ 253111. List of qualified HUBZone small business concerns**

10 The Administrator shall establish and maintain a list of qualified HUB-
11 Zone small business concerns, which list, to the extent practicable—

12 (1) after the Administrator makes the certification required by sec-
13 tion 253101(7)(A)(i) of this title regarding a qualified HUBZone small
14 business concern and determines that subparagraph section
15 253101(7)(A)(ii) of this title does not apply to that qualified HUBZone
16 small business concern, shall include the name, address, and type of
17 business with respect to each such small business concern;

18 (2) shall be updated by the Administrator not less than annually;
19 and

20 (3) on request, shall be provided to any Federal agency or other en-
21 tity.

22 **§ 253112. Penalties**

23 In addition to the penalties described in section 105104 of this title, a
24 small business concern that is determined by the Administrator to have mis-
25 represented the status of that small business concern as a HUBZone small
26 business concern for purposes of this section shall be subject to—

27 (1) section 1001 of title 18; and

28 (2) sections 3729 to 3733 of title 31.

29 **Chapter 255—Small Business Concerns**
30 **Owned and Controlled by Service-Dis-**
31 **abled Veterans**

Sec.

255101. Sole source preference.

255102. Setaside preference.

255103. Relationship to other contracting preferences.

255104. Provision of data.

255105. Verification of eligibility.

255106. Mentor-protégé program.

255107. Penalties.

32 **§ 255101. Sole source preference**

33 A contracting officer may award a sole source contract to any small busi-
34 ness concern owned and controlled by service-disabled veterans if—

1 (1) the contracting officer determines that the small business con-
2 cern owned and controlled by service-disabled veterans is a responsible
3 contractor with respect to performance of the contract opportunity;

4 (2) the contracting officer does not have a reasonable expectation
5 that 2 or more small business concerns owned and controlled by serv-
6 ice-disabled veterans will submit offers for the contracting opportunity;

7 (3) the anticipated award price of the contract (including options)
8 will not exceed—

9 (A) \$5,000,000, in the case of a contract opportunity assigned
10 a North American Industry Classification System code for manu-
11 facturing; or

12 (B) \$3,000,000, in the case of any other contract opportunity;
13 and

14 (4) in the estimation of the contracting officer, the contract award
15 can be made at a fair and reasonable price.

16 **§ 255102. Setaside preference**

17 A contracting officer may award a contract on the basis of competition
18 restricted to small business concerns owned and controlled by service-dis-
19 abled veterans if the contracting officer has a reasonable expectation that—

20 (1) not fewer than 2 small business concerns owned and controlled
21 by service-disabled veterans will submit offers; and

22 (2) the award can be made at a fair market price.

23 **§ 255103. Relationship to other contracting preferences**

24 A procurement may not be made from a source on the basis of a pref-
25 erence provided under section 255101 or 255102 of this title if the procure-
26 ment would otherwise be made from a different source under—

27 (1) section 4124 or 4125 of title 18; or

28 (2) chapter 85 of title 41.

29 **§ 255104. Provision of data**

30 On the request of the Administrator, the head of any Federal agency
31 shall promptly provide to the Administrator such information as the Admin-
32 istrator determines to be necessary to carry out this chapter.

33 **§ 255105. Verification of eligibility**

34 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall
35 establish procedures relating to—

36 (1) the filing, investigation, and disposition by the Administrator of
37 any challenge to the eligibility of a small business concern to receive
38 assistance under this chapter (including a challenge, filed by an inter-
39 ested party, relating to the veracity of a certification made or informa-
40 tion provided to the Administrator by a small business concern); and

1 (2) verification by the Administrator of the accuracy of any certifi-
2 cation made or information provided to the Administrator by a small
3 business concern.

4 (b) EXAMINATIONS.—The procedures established under subsection (a)
5 may provide for program examinations (including random program examina-
6 tions) by the Administrator of any small business concern making a certifi-
7 cation or providing information to the Administrator.

8 **§ 255106. Mentor-protégé program**

9 The Administrator may establish a mentor-protégé program for small
10 business concerns owned and controlled by service-disabled veterans modeled
11 on the mentor-protégé program for small business concerns participating in
12 the business development program.

13 **§ 255107. Penalties**

14 In addition to the penalties described in section 105104 of this title, a
15 small business concern that is determined by the Administrator to have mis-
16 represented the status of the small business concern as a small business
17 concern owned and controlled by service-disabled veterans for purposes of
18 this chapter shall be subject to—

- 19 (1) section 1001 of title 18; and
20 (2) sections 3729 to 3733 of title 31.

21 **Chapter 257—Small Business Concerns** 22 **Owned and Controlled by Women**

Sec.

257101. Definition of small business concern owned and controlled by women.
257102. Restricted competition.
257103. Identification of industries.
257104. Provision of data.
257105. Verification of eligibility.
257106. Mentor-protégé program.
257107. Penalties.

23 **§ 257101. Definition of small business concern owned and** 24 **controlled by women**

25 In this chapter, the term “small business concern owned and controlled
26 by women” has the meaning given the term in section 101102 of this title,
27 except that ownership shall be determined without regard to any community
28 property law.

29 **§ 257102. Restricted competition**

30 (a) IN GENERAL.—A contracting officer may restrict competition for any
31 contract for the procurement of a good or service by the Federal Govern-
32 ment to small business concerns owned and controlled by women if—

- 33 (1) each of the small business concerns owned and controlled by
34 women is not less than 51 percent owned by 1 or more women who
35 are economically disadvantaged (for which purpose ownership shall be
36 determined without regard to any community property law);

1 (2) the contracting officer has a reasonable expectation that 2 or
2 more small business concerns owned and controlled by economically dis-
3 advantaged women will submit offers for the contract;

4 (3) the contract is for the procurement of a good or service with re-
5 spect to an industry identified by the Administrator under section
6 257103 of this title;

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

9 (5) each of the small business concerns owned and controlled by
10 women—

11 (A) is certified by a Federal agency, a State government, or a
12 national certifying entity approved by the Administrator, as a
13 small business concern owned and controlled by women; or

14 (B)(i) certifies to the contracting officer that it is a small busi-
15 ness concern owned and controlled by women; and

16 (ii) provides adequate documentation, in accordance with stand-
17 ards established by the Administrator, to support the certification.

18 (b) WAIVER.—The Administrator may waive subsection (a)(1) with re-
19 spect to a small business concern owned and controlled by women if the Ad-
20 ministrator determines that the small business concern owned and controlled
21 by women is in an industry in which small business concerns owned and
22 controlled by women are substantially underrepresented.

23 **§ 257103. Identification of industries**

24 The Administrator shall conduct a study to identify industries in which
25 small business concerns owned and controlled by women are under-
26 represented with respect to Federal agency procurement contracting.

27 **§ 257104. Provision of data**

28 On the request of the Administrator, the head of a Federal agency shall
29 promptly provide to the Administrator such information as the Adminis-
30 trator determines to be necessary to carry out this chapter.

31 **§ 257105. Verification of eligibility**

32 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall
33 establish procedures relating to—

34 (1) the filing, investigation, and disposition by the Administrator of
35 any challenge to the eligibility of a small business concern to receive
36 assistance under this chapter (including a challenge, filed by an inter-
37 ested party, relating to the veracity of a certification made or informa-
38 tion provided to the Administrator by a small business concern under
39 section 257102(a)(5) of this title); and

1 (2) verification by the Administrator of the accuracy of any certifi-
2 cation made or information provided to the Administrator by a small
3 business concern under section 257102(a)(5) of this title.

4 (b) EXAMINATIONS.—The procedures established under subsection (a)
5 may provide for program examinations (including random program examina-
6 tions) by the Administrator of any small business concern making a certifi-
7 cation or providing information to the Administrator under section
8 257102(a)(5) of this title.

9 **§ 257106. Mentor-protégé program**

10 The Administrator may establish a mentor-protégé program for small
11 business concerns owned and controlled by women modeled on the mentor-
12 protégé program for small business concerns participating in the business
13 development program.

14 **§ 257107. Penalties**

15 In addition to the penalties described in section 105104 of this title, a
16 small business concern that is determined by the Administrator to have mis-
17 represented the status of the small business concern as a small business
18 concern owned and controlled by women for purposes of this chapter shall
19 be subject to—

- 20 (1) section 1001 of title 18; and
21 (2) sections 3729 to 3733 of title 31.

22 **Division I—Research and Development**
23 **Chapter 261—General Provisions**

Sec.

261101. Definitions.
261102. Assistance to small business concerns.
261103. Federal agency cooperation.
261104. Joint research and development programs.

24 **§ 261101. Definitions**

25 In this division:

26 (1) COMMERCIAL APPLICATION.—The term “commercial application”
27 includes testing and evaluation of products, services, or technologies for
28 use in technical or weapons systems.

29 (2) COMMERCIALIZATION.—The term “commercialization” means—

30 (A) the process of developing a product, process, technology, or
31 service; and

32 (B) the production and delivery (whether by the originating
33 party or by others) of a product, process, technology, or service
34 for sale to or use by the Federal Government or a commercial
35 market.

36 (3) COOPERATIVE RESEARCH AND DEVELOPMENT.—The term “coop-
37 erative research and development” means research or research and de-

1 development conducted jointly by a small business concern and a research
2 institution in which not less than 40 percent of the work is performed
3 by the small business concern and not less than 30 percent of the work
4 is performed by the research institution.

5 (4) EXTRAMURAL BUDGET.—

6 (A) IN GENERAL.—The term “extramural budget”, in reference
7 to the extramural budget of a Federal agency, means the sum of
8 the total obligations of the Federal agency for research and re-
9 search and development activities minus amounts obligated for re-
10 search or research and development by employees of the Federal
11 agency in or through Government-owned, Government-operated fa-
12 cilities.

13 (B) APPLICABILITY TO DEPARTMENT OF ENERGY.—As applied
14 with respect to the Department of Energy, the term “extramural
15 budget” does not include amounts obligated for atomic energy de-
16 fense programs solely for weapons activities or for naval reactor
17 programs.

18 (C) APPLICABILITY TO AGENCY FOR INTERNATIONAL DEVELOP-
19 MENT.—As applied to the Agency for International Development,
20 the term “extramural budget” does not include amounts obligated
21 solely for general institutional support of international research
22 centers or for grants to foreign countries.

23 (5) FEDERAL AGENCY.—

24 (A) IN GENERAL.—The term “Federal agency” means—

- 25 (i) an executive agency (as defined in section 105 of title
26 5); or
27 (ii) a military department.

28 (B) EXCLUSION.—The term “Federal agency” does not include
29 an agency within the Intelligence Community (as defined in sec-
30 tion 3.5(h) of Executive Order 12333 (50 U.S.C. 3001 note) (or
31 any successor Executive order)).

32 (6) FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.—

33 The term “Federally funded research and development center” means
34 a federally funded research and development center identified by the
35 National Scientific Foundation in accordance with the Governmentwide
36 Federal Acquisition Regulation (or any successor regulation).

37 (7) FUNDING AGREEMENT.—The term “funding agreement” means
38 a contract, grant, or cooperative agreement entered into between a
39 Federal agency and a small business concern for the performance of
40 experimental, developmental, or research work funded in whole or in
41 part by the Federal Government.

- 1 (8) PHASE I.—The term “phase I”—
2 (A) with respect to an SBIR program, means the phase de-
3 scribed in paragraph (17)(A); and
4 (B) with respect to an STTR program, means the phase de-
5 scribed in paragraph (18)(A).
- 6 (9) PHASE II.—The term “phase II”—
7 (A) with respect to an SBIR program, means the phase de-
8 scribed in paragraph (17)(B); and
9 (B) with respect to an STTR program, means the phase de-
10 scribed in paragraph (18)(B).
- 11 (10) PHASE III.—The term “phase III”—
12 (A) with respect to an SBIR program, means the phase de-
13 scribed in paragraph (17)(C); and
14 (B) with respect to an STTR program, means the phase de-
15 scribed in paragraph (18)(C).
- 16 (11) PHASE III AGREEMENT.—The term “phase III agreement”
17 means a follow-on, non-SBIR program-funded contract or non-STTR
18 program-funded contract described in paragraph (17)(C) or (18)(C).
- 19 (12) RESEARCH INSTITUTION.—
20 (A) IN GENERAL.—The term “research institution” means a
21 nonprofit institution (as defined in section 4 of the Stevenson-
22 Wylder Technology Innovation Act of 1980 (15 U.S.C. 3703)).
23 (B) INCLUSION.—The term “research institution” includes a
24 federally funded research and development center.
- 25 (13) RESEARCH OR RESEARCH AND DEVELOPMENT.—The term “re-
26 search or research and development” means an activity that is—
27 (A) a systematic, intensive study directed toward greater knowl-
28 edge or understanding of the subject studied;
29 (B) a systematic study directed specifically toward applying new
30 knowledge to meet a recognized need; or
31 (C) a systematic application of knowledge toward the production
32 of useful materials, devices, and systems or methods, including de-
33 sign, development, and improvement of prototypes and new proc-
34 esses to meet specific requirements.
- 35 (14) SBIR AGENCY.—The term “SBIR agency” means a Federal
36 agency that is required by section 263101 of this title to have an SBIR
37 program.
- 38 (15) SBIR PARTICIPATING AGENCY.—The term “SBIR participating
39 agency” means—
40 (A) an SBIR agency; and

1 (B) any other Federal agency that participates in the SBIR
2 program.

3 (16) SBIR PROGRAM.—The term “SBIR program” means a small
4 business innovation research program.

5 (17) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term
6 “small business innovation research program” means a program under
7 which a portion of a Federal agency’s research or research and develop-
8 ment effort is reserved for award to small business concerns through
9 a uniform process having—

10 (A) a 1st phase for determining, insofar as possible, the sci-
11 entific and technical merit and feasibility of ideas that appear to
12 have commercial potential, as described in subparagraph (B), sub-
13 mitted pursuant to SBIR program solicitations;

14 (B) a 2d phase, to further develop proposals that meet particu-
15 lar program needs—

16 (i) in which awards (including awards for testing and eval-
17 uation of products, services, or technologies for use in tech-
18 nical or weapons systems) shall be made based on the sci-
19 entific and technical merit and feasibility of the proposals, as
20 evidenced by the 1st phase, considering, among other things,
21 the proposal’s commercial potential, as evidenced by—

22 (I) the small business concern’s record of successfully
23 commercializing SBIR program research or other re-
24 search;

25 (II) the existence of phase II funding commitments
26 from private sector or non-SBIR program funding
27 sources;

28 (III) the existence of phase III follow-on commitments
29 for the subject of the research; and

30 (IV) the presence of other indicators of the commercial
31 potential of the idea; and

32 (ii) that does not include any invitation, prescreening, or
33 preselection process for eligibility; and

34 (C) where appropriate, a 3d phase for work that derives from,
35 extends, or completes efforts made under prior funding agree-
36 ments under the SBIR program—

37 (i) in which commercial applications of SBIR program-
38 funded research or research and development are funded—

39 (I) by non-Federal sources of capital; or

1 (II) for products or services intended for use by the
2 Federal Government, by follow-on non-SBIR program
3 Federal funding awards; or

4 (ii) for which awards from non-SBIR program Federal
5 funding sources are used for the continuation of research or
6 research and development that has been competitively selected
7 using peer review or merit-based selection procedures.

8 (18) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The
9 term “small business technology transfer program” means a program
10 under which a portion of a Federal agency’s extramural research or re-
11 search and development effort is reserved for award to small business
12 concerns for cooperative research and development through a uniform
13 process having—

14 (A) a 1st phase, to determine, to the extent possible, the sci-
15 entific, technical, and commercial merit and feasibility of ideas
16 submitted pursuant to STTR program solicitations;

17 (B) a 2d phase, to further develop proposed ideas to meet par-
18 ticular program needs—

19 (i) in which awards (including awards for testing and eval-
20 uation of products, services, or technologies for use in tech-
21 nical or weapons systems) shall be made based on the sci-
22 entific, technical, and commercial merit and feasibility of the
23 idea, as evidenced by the 1st phase and by other relevant in-
24 formation; and

25 (ii) that does not include any invitation, prescreening, or
26 preselection process for eligibility; and

27 (C) where appropriate, a 3d phase for work that derives from,
28 extends, or completes efforts made under prior funding agree-
29 ments under the STTR program—

30 (i) in which commercial applications of STTR program-
31 funded research or research and development are funded—

32 (I) by non-Federal sources of capital; or

33 (II) for products or services intended for use by the
34 Federal Government, by follow-on non-STTR program
35 Federal funding awards; and

36 (ii) for which awards from non-STTR program Federal
37 funding sources are used for the continuation of research or
38 research and development that has been competitively selected
39 using peer review or scientific review criteria.

1 (19) STTR AGENCY.—The term “STTR agency” means a Federal
2 agency that is required by section 263201 of this title to have an
3 STTR program.

4 (20) STTR PARTICIPATING AGENCY.—The term “STTR participat-
5 ing agency” means—

6 (A) an STTR agency; and

7 (B) any other Federal agency that participates in the STTR
8 program.

9 (21) STTR PROGRAM.—The term “STTR program” means a small
10 business technology transfer program.

11 **§ 261102. Assistance to small business concerns**

12 The Administrator shall—

13 (1) assist small business concerns in obtaining Government contracts
14 for research and development;

15 (2) assist small business concerns in obtaining the benefits of re-
16 search and development performed under Government contracts or at
17 Government expense;

18 (3) provide technical assistance to small business concerns to accom-
19 plish the purposes of this division;

20 (4) develop and maintain a source file and an information program
21 to assure each qualified and interested small business concern the op-
22 portunity to participate in Federal agency SBIR programs and STTR
23 programs;

24 (5) coordinate with participating Federal agencies a schedule for re-
25 lease of SBIR program and STTR program solicitations, and prepare
26 a master release schedule so as to maximize the opportunity of small
27 business concerns to respond to solicitations;

28 (6) independently survey and monitor the operation of SBIR pro-
29 grams and STTR programs within participating Federal agencies;

30 (7) provide for and fully implement the tenets of Executive Order
31 13329 (Encouraging Innovation in Manufacturing); and

32 (8) coordinate the implementation of electronic databases at each of
33 the Federal agencies participating in the SBIR program or STTR pro-
34 gram, including the technical ability of the participating agencies to
35 share data electronically.

36 **§ 261103. Federal agency cooperation**

37 The Administrator may consult and cooperate with, and make studies and
38 recommendations to, all Federal agencies and the Government Accountabil-
39 ity Office, and a Federal agency or the Government Accountability Office
40 shall cooperate with the Administrator in order to carry out and to accom-
41 plish the purposes of this division.

1 **§ 261104. Joint research and development programs**

2 (a) IN GENERAL.—The Administrator may consult with representatives
3 of small business concerns with a view to assisting and encouraging small
4 business concerns in undertaking joint programs for research and develop-
5 ment carried out through such corporate or other mechanism as may be
6 most appropriate for the purpose.

7 (b) PURPOSES.—A joint program under subsection (a) may, among other
8 things, include the purposes of—

9 (1) constructing, acquiring, or establishing a laboratory or other fa-
10 cility for the conduct of research;

11 (2) undertaking and utilizing applied research;

12 (3) collecting research information related to a particular industry
13 and disseminating the information to participating members;

14 (4) conducting applied research on a protected, proprietary, and con-
15 tractual basis with member or nonmember concerns, Federal agencies,
16 the Government Accountability Office, and others;

17 (5) prosecuting applications for patents and rendering patent serv-
18 ices for participating members; and

19 (6) negotiating and granting licenses under patents held under the
20 joint program and establishing corporations designed to exploit particu-
21 lar patents obtained by the corporations.

22 (c) APPROVAL OF AGREEMENTS.—After consultation with the Attorney
23 General and the Chairman of the Federal Trade Commission, and with the
24 prior written approval of the Attorney General, the Administrator may ap-
25 prove an agreement between small business concerns providing for a joint
26 program of research and development if the Administrator determines that
27 the joint program proposed will maintain and strengthen the free enterprise
28 system and the economy of the Nation.

29 (d) WITHDRAWAL OF APPROVAL.—The Administrator or the Attorney
30 General may at any time withdraw approval of the agreement and the joint
31 program of research and development covered by the agreement if the Ad-
32 ministrator or Attorney General determines that the agreement or the joint
33 program is no longer in the best interests of the competitive free enterprise
34 system and the economy of the Nation.

35 (e) PUBLICATION IN FEDERAL REGISTER.—A copy of the following shall
36 be published in the Federal Register:

37 (1) An approval under subsection (c) of an agreement between small
38 business concerns providing for a joint program of research and devel-
39 opment and an accompanying determination by the Administrator that
40 the joint program proposed will maintain and strengthen the free enter-
41 prise system and the economy of the Nation.

1 (2) A withdrawal of approval of a joint agreement and the joint pro-
2 gram of research and development covered by the agreement and an
3 accompanying determination by the Administrator or Attorney General
4 that the agreement or the joint program is no longer in the best inter-
5 ests of the competitive free enterprise system and the economy of the
6 Nation.

7 (3) A modification of an approval described in paragraph (1).

8 (f) NONDELEGABILITY.—The authority of the Administrator under this
9 section shall not be delegated.

10 (g) NO VIOLATION OF ANTITRUST LAWS OR FEDERAL TRADE COMMIS-
11 SION ACT.—

12 (1) IN GENERAL.—Subject to paragraph (2), no act or omission to
13 act pursuant to and within the scope of a joint program for research
14 and development under an agreement approved by the Administrator
15 under this section shall be within the prohibitions of the antitrust laws
16 or the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

17 (2) WITHDRAWAL OF APPROVAL.—On publication in the Federal
18 Register of the notice of withdrawal of approval of an agreement grant-
19 ed under this section, by the Administrator or by the Attorney General,
20 this section shall not apply to any subsequent act or omission to act
21 by reason of the agreement or the approval.

22 **Chapter 263—SBIR Programs and STTR** 23 **Programs**

Subchapter I—SBIR Programs

Sec.

- 263101. Required expenditure amounts.
- 263102. Administration by Federal agencies.
- 263103. Funding agreement goals.
- 263104. Policy directives.
- 263105. Coordination of technology development programs.
- 263106. Purchase of American-made equipment and products.
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Subchapter II—STTR Programs

- 263201. Required expenditure amounts.
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Subchapter III—Provisions Relating to Both SBIR Programs and STTR Programs

- 263301. Database.
- 263302. Phase III agreements.
- 263303. Inclusion of SBIR program and STTR program information in strategic plans.
- 263304. Reduction of paperwork and compliance burden.
- 263305. FAST program.

1 an SBIR program shall not be considered to meet any portion of the per-
2 centage requirement of subsection (a).

3 (d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed
4 to prohibit a Federal agency from expending with small business concerns
5 an amount of the extramural budget for research or research and develop-
6 ment of the agency that exceeds the amount required under subsection (a).

7 **§ 263102. Administration by Federal agencies**

8 (a) IN GENERAL.—An SBIR agency shall, in accordance with this divi-
9 sion (including policy directives under section 263104 of this title)—

10 (1) unilaterally determine categories of projects to be in its SBIR
11 program;

12 (2) issue SBIR program solicitations in accordance with a schedule
13 determined cooperatively with the Administrator;

14 (3) unilaterally determine research topics within the SBIR agency's
15 SBIR program solicitations, giving special consideration to broad re-
16 search topics and to topics that further 1 or more critical technologies,
17 as identified by—

18 (A) the National Critical Technologies Panel in the reports re-
19 quired under section 603 of the National Science and Technology
20 Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)
21 (as in effect before January 1, 2001); or

22 (B) the Secretary of Defense, in the reports required under sec-
23 tion 2522 of title 10 (as in effect before February 10, 1996);

24 (4)(A) unilaterally receive and evaluate proposals resulting from
25 SBIR program proposals; and

26 (B) make a final decision on each proposal submitted under the
27 SBIR program—

28 (i)(I) in the case of the National Institutes of Health or the
29 National Science Foundation, not later than 1 year after the
30 date on which the applicable solicitation closes; or

31 (II) in the case of SBIR participating agency, not later
32 than 90 days after the date on which the applicable solicita-
33 tion closes; or

34 (ii) if the Administrator authorizes an extension with re-
35 spect to a solicitation, not later than 90 days after the date
36 that would otherwise be applicable to the agency under clause
37 (i);

38 (5) subject to section 263111(b) of this title—

39 (A) unilaterally select awardees for its SBIR program funding
40 agreements; and

1 (B) inform each awardee under a funding agreement, to the ex-
2 tent possible, of the expenses of the awardee that will be allowable
3 under the funding agreement;

4 (6) administer its own SBIR program funding agreements (or dele-
5 gate such administration to another Federal agency);

6 (7)(A) make payments to recipients of SBIR program funding agree-
7 ments on the basis of progress toward or completion of the funding
8 agreement requirements; and

9 (B) in all cases, make payment to recipients under such agreements
10 in full, subject to audit, on or before the last day of the 12-month pe-
11 riod beginning on the date of completion of the funding agreement re-
12 quirements;

13 (8) collect annually, and maintain in a common format in accordance
14 with the simplified reporting requirements under section 263304 of this
15 title, such information from awardees as is necessary to assess the
16 SBIR program, including information necessary to maintain the data-
17 base under section 263301 of this title, including—

18 (A) whether an awardee—

19 (i) has venture capital, hedge fund, or private equity firm
20 investment or is majority-owned by multiple venture capital
21 operating companies, hedge funds, or private equity firms
22 and, if so—

23 (I) the amount of venture capital, hedge fund, or pri-
24 vate equity firm investment that the awardee has re-
25 ceived as of the date of the award; and

26 (II) the amount of additional capital that the awardee
27 has invested in the SBIR technology;

28 (ii) has an investor that—

29 (I) is an individual who is not a citizen of the United
30 States or a lawful permanent resident of the United
31 States and, if so, the name of any such individual; or

32 (II) is a person that is not an individual and is not
33 organized under the laws of a State or the United States
34 and, if so, the name of any such person;

35 (iii) is owned by a woman or has a woman as a principal
36 investor;

37 (iv) is owned by a socially or economically disadvantaged
38 individual or has a socially disadvantaged individual or eco-
39 nomically disadvantaged individual as a principal investor;

1 (v) is a faculty member or a student at an institution of
2 higher education (as defined in section 101 of the Higher
3 Education Act of 1965 (20 U.S.C. 1001); or

4 (vi) is located in a State described in section 263105(e) of
5 this title;

6 (B) a justification statement from the agency, if an awardee re-
7 ceives an award in an amount that is more than the award guide-
8 lines under this division; and

9 (C) data with respect to the FAST program;

10 (9)(A) include a section on its SBIR program in its annual perform-
11 ance plan required by subsections (a) and (b) of section 1115 of title
12 31; and

13 (B) submit that section to the Committee on Small Business and
14 Entrepreneurship of the Senate and the Committee on Science and
15 Committee on Small Business of the House of Representatives;

16 (10) provide for and fully implement the tenets of Executive Order
17 13329 (Encouraging Innovation in Manufacturing); and

18 (11) provide timely notice to the Administrator of any case or con-
19 troversy before any Federal judicial or administrative tribunal concern-
20 ing the SBIR program of the SBIR agency.

21 (b) RESEARCH AND DEVELOPMENT FOCUS.—

22 (1) REVISION AND UPDATE OF CRITERIA AND PROCEDURES OF
23 IDENTIFICATION.—In carrying out subsection (a), the Secretary of De-
24 fense shall, not less often than once every 4 years, revise and update
25 the criteria and procedures used to identify areas of the research and
26 development efforts of the Department of Defense that are suitable for
27 the provision of funds under the SBIR program and the STTR pro-
28 gram of the Department of Defense.

29 (2) USE OF PLANS.—The criteria and procedures described in para-
30 graph (1) shall be developed through the use of the most current ver-
31 sions of the following plans:

32 (A) The Joint Warfighting Science and Technology Plan re-
33 quired under section 270 of the National Defense Authorization
34 Act for Fiscal Year 1997 (10 U.S.C. 2501 note; Public Law 104-
35 201).

36 (B) The Defense Technology Area Plan of the Department of
37 Defense.

38 (C) The Basic Research Plan of the Department of Defense.

39 (3) INPUT IN IDENTIFICATION OF AREAS OF EFFORT.—The criteria
40 and procedures described in paragraph (1) shall include input in the
41 identification of areas of research and development efforts described in

1 that paragraph from Department of Defense program managers and
2 program executive officers.

3 **§ 263103. Funding agreement goals**

4 (a) IN GENERAL.—A Federal agency that has an extramural budget for
5 research or research and development in excess of \$20,000,000 for any fis-
6 cal year shall establish goals specifically for funding agreements for research
7 or research and development to small business concerns.

8 (b) NO BACKSLIDING.—No goal established by a Federal agency under
9 subsection (a) shall be less than the percentage of the Federal agency’s re-
10 search or research and development budget expended under funding agree-
11 ments with small business concerns in the immediately preceding fiscal year.

12 **§ 263104. Policy directives**

13 (a) IN GENERAL.—The Administrator, after consultation with the Admin-
14 istrator for Federal Procurement Policy, the Director of the Office of
15 Science and Technology Policy, and the Intergovernmental Affairs Division
16 of the Office of Management and Budget, shall issue policy directives for
17 the general conduct of the SBIR programs within the Federal Government.

18 (b) MATTERS TO BE PROVIDED FOR.—Policy directives under subsection
19 (a) shall provide for—

20 (1) simplified, standardized, and timely SBIR program solicitations;

21 (2) a simplified, standardized funding process that provides for—

22 (A) the timely receipt and review of proposals;

23 (B) outside peer review for at least phase two proposals, if ap-
24 propriate;

25 (C) protection of proprietary information provided in proposals;

26 (D) selection of awardees;

27 (E) retention by a small business concern of the rights to data
28 generated by the small business concern in the performance of an
29 SBIR award for a period of not less than 4 years (without regard
30 to whether the small business concern continues to qualify as a
31 small business concern for all of that period);

32 (F) transfer of title to property provided by a Federal agency
33 to a small business concern if such a transfer would be more cost
34 effective than recovery of the property by the Federal agency;

35 (G) cost sharing; and

36 (H) cost principles and payment schedules;

37 (3) exemptions from the policy directives under paragraph (2) if na-
38 tional security or intelligence functions clearly would be jeopardized;

39 (4) minimizing the regulatory burden associated with participation in
40 an SBIR program for a small business concern so as to stimulate the
41 cost-effective conduct of Federal research and development and the

1 likelihood of commercialization of the results of research and develop-
2 ment conducted under the SBIR program;

3 (5) the submission by a Federal agency to the Administrator and the
4 Office of Science and Technology Policy of a simplified, standardized,
5 and timely annual report on its SBIR program;

6 (6) standardized and orderly withdrawal from SBIR program partici-
7 pation by a Federal agency;

8 (7) the voluntary participation in an SBIR program by a Federal
9 agency not required by section 263101 of this title to have an SBIR
10 program;

11 (8) continued use by a small business concern participating in phase
12 III of an SBIR program, as a directed bailment, of any property trans-
13 ferred by a Federal agency to the small business concern in phase II
14 of an SBIR program for a period of not less than 2 years, beginning
15 on the initial date of the small business concern's participation in phase
16 III of an SBIR program;

17 (9) procedures to ensure, to the extent practicable, that a Federal
18 agency that intends to pursue research, development, or production of
19 a technology developed by a small business concern under an SBIR
20 program enters into a follow-on, non-SBIR program funding agreement
21 with the small business concern for the research, development, or pro-
22 duction;

23 (10) thresholds in the amounts of funds that a Federal agency may
24 award of \$150,000 (which amount the Administrator shall adjust an-
25 nually for inflation) in phase I of an SBIR program and \$1,000,000
26 in phase II of an SBIR program (which amount the Administrator
27 shall adjust annually for inflation);

28 (11) a process for notifying SBIR agencies and potential SBIR pro-
29 gram participants of the critical technologies, as identified—

30 (A) by the National Critical Technologies Panel in accordance
31 with section 603 of the National Science and Technology Policy,
32 Organization, and Priorities Act of 1976 (42 U.S.C. 6683) (as in
33 effect before January 1, 2001); or

34 (B) by the Secretary of Defense in accordance with section
35 2522 of title 10 (as in effect before February 10, 1996);

36 (12)(A) enhanced outreach efforts to increase the participation of
37 small business concerns owned and controlled by socially and economi-
38 cally disadvantaged individuals and the participation of small business
39 concerns owned and controlled by women in technological innovation
40 and in SBIR programs, including phase III of SBIR programs; and

41 (B) the collection of data to document that participation;

1 (13) technical and programmatic guidance to encourage Federal
2 agencies to develop gap-funding programs to address the delay between
3 an award for phase I of an SBIR program and the application for and
4 extension of an award for phase II of the SBIR program;

5 (14) procedures to ensure that a small business concern that submits
6 a proposal for a funding agreement for phase I of an SBIR program
7 and that has received more than 15 phase II SBIR awards during the
8 preceding 5 fiscal years is able to demonstrate the extent to which the
9 small business concern was able to secure phase III funding to develop
10 concepts resulting from previous phase II SBIR awards;

11 (15) the requirement of a succinct commercialization plan with each
12 application for a phase II SBIR award that is moving toward commer-
13 cialization;

14 (16) a requirement that a Federal agency report to the Adminis-
15 trator, not less frequently than annually, all instances in which the
16 Federal agency pursued research, development, or production of a tech-
17 nology developed by a small business concern using an award made
18 under the SBIR program of the Federal agency and determined that
19 it was not practicable to enter into a follow-on non-SBIR program
20 funding agreement with the small business concern; and

21 (17) implementation of section 263304 of this title, including estab-
22 lishing standardized procedures for the provision of information under
23 section 263301(c) of this title.

24 (c) PHASED WITHDRAWAL FROM SBIR PROGRAM.—At the discretion of
25 the Administrator, the policy directive under subsection (b)(6) may require
26 a phased withdrawal over a period of time sufficient in duration to minimize
27 any adverse impact on small business concerns.

28 (d) RIGHTS TO DATA.—The rights provided for under subsection
29 (b)(1)(E) shall apply to all Federal funding awards under this division, in-
30 cluding phase I, phase II, and phase III awards.

31 (e) REPORTS ON IMPRACTICABILITY OF FOLLOW-ON AGREEMENTS.—A
32 report under subsection (b)(16) shall include, at a minimum—

33 (1) the reasons why the follow-on funding agreement with the small
34 business concern was not practicable;

35 (2) the identity of the entity with which the Federal agency con-
36 tracted to perform the research, development, or production; and

37 (3) a description of the type of funding agreement under which the
38 research, development, or production was obtained.

39 **§ 263105. Coordination of technology development programs**

40 (a) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—In this
41 section, the term “technology development program” means—

1 (1) the Experimental Program to Stimulate Competitive Research of
2 the National Science Foundation, as established under section 113 of
3 the National Science Foundation Authorization Act of 1988 (42 U.S.C.
4 1862g);

5 (2) the Defense Experimental Program to Stimulate Competitive Re-
6 search of the Department of Defense;

7 (3) the Experimental Program to Stimulate Competitive Research of
8 the Department of Energy;

9 (4) the Experimental Program to Stimulate Competitive Research of
10 the Environmental Protection Agency;

11 (5) the Experimental Program to Stimulate Competitive Research of
12 the National Aeronautics and Space Administration;

13 (6) the Institutional Development Award Program of the National
14 Institutes of Health; and

15 (7) the National Research Initiative Competitive Grants Program of
16 the Department of Agriculture.

17 (b) COORDINATION REQUIREMENTS.—An SBIR agency that establishes a
18 technology development program may, in each fiscal year, review for funding
19 under the technology development program—

20 (1) a proposal to provide outreach and assistance to 1 or more small
21 business concerns interested in participating in the Federal agency's
22 SBIR program (including a proposal to make a grant or loan to a busi-
23 ness concern to pay a portion or all of the cost of developing an SBIR
24 program proposal) from an entity, organization, or individual located
25 in—

26 (A) a State that is eligible to participate in the technology devel-
27 opment program; or

28 (B) a State described in subsection (c); or

29 (2) a proposal for phase I of the SBIR program (if the proposal,
30 though meritorious, is not funded through the SBIR program for that
31 fiscal year due to funding restraints) from a small business concern lo-
32 cated in—

33 (A) a State that is eligible to participate in the technology devel-
34 opment program; or

35 (B) a State described in subsection (c).

36 (c) ADDITIONALLY ELIGIBLE STATE.—A State referred to in paragraph
37 (1)(B) or (2)(B) of subsection (b) is a State in which the total value of con-
38 tracts awarded to small business concerns under all SBIR programs is less
39 than the total value of contracts awarded to small business concerns in a
40 majority of other States, as determined by the Administrator in even-num-

1 bered fiscal years, based on the most recent statistics compiled by the Ad-
2 ministrator.

3 (d) COORDINATION OF THE SBIR PROGRAM AND THE EXPERIMENTAL
4 PROGRAM TO STIMULATE COMPETITIVE RESEARCH.—The head of a Fed-
5 eral agency that participates in the SBIR program and the Experimental
6 Program to Stimulate Competitive Research or the Institutional Develop-
7 ment Award Program shall coordinate, to the extent possible, the initiatives
8 of the agency with respect to those programs.

9 **§ 263106. Purchase of American-made equipment and prod-**
10 **ucts**

11 (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is
12 the sense of Congress that an entity that is awarded a funding agreement
13 under the SBIR program of a Federal agency should, when purchasing any
14 equipment or a product with funds provided through the funding agreement,
15 purchase only American-made equipment and products, to the extent pos-
16 sible in keeping with the overall purposes of the SBIR program.

17 (b) NOTICE TO SBIR AWARDEES.—A Federal agency that awards a fund-
18 ing agreement under an SBIR program shall provide to each recipient of
19 such an award a notice describing the sense of the Congress stated in sub-
20 section (a).

21 **§ 263107. Use of Department of Agriculture extramural**
22 **budget funds**

23 All funds appropriated that are determined to be part of the extramural
24 budget of the Department of Agriculture for any fiscal year for purposes
25 of meeting the requirements of this division shall be available for funding
26 agreements with small business concerns for any purpose in furtherance of
27 the SBIR program of the Department of Agriculture. Such funds may be
28 transferred for that purpose from 1 appropriation account to another or to
29 a single account.

30 **§ 263108. Phase flexibility**

31 During fiscal years 2012 through 2017, the National Institutes of Health,
32 the Department of Defense, and the Department of Education may each
33 provide to a small business concern an award under phase II of the SBIR
34 program with respect to a project, without regard to whether the small busi-
35 ness concern was provided an award under phase I of an SBIR program
36 with respect to the project, if the head of the applicable agency determines
37 that the small business concern has completed the determinations described
38 in section 261101(17)(A) of this title with respect to the project despite not
39 having been provided a phase I award.

1 **§ 263109. Participation of small business concerns that are**
2 **majority-owned by venture capital operating com-**
3 **panies, hedge funds, or private equity firms in the**
4 **SBIR program**

5 (a) IN GENERAL.—On providing a written determination described in
6 subsection (b) to the Administrator, the Committee on Small Business and
7 Entrepreneurship of the Senate, and the Committee on Small Business and
8 Committee on Science, Space, and Technology of the House of Representa-
9 tives, not later than 30 days before the date on which any such award is
10 made—

11 (1) the Director of the National Institutes of Health, the Secretary
12 of Energy, and the Director of the National Science Foundation may
13 award not more than 25 percent of the funds allocated for the SBIR
14 program of the applicable Federal agency to small business concerns
15 that are majority-owned by multiple venture capital operating compa-
16 nies, hedge funds, or private equity firms through competitive, merit-
17 based procedures that are open to all eligible small business concerns;
18 and

19 (2) the head of an SBIR participating agency other than a Federal
20 agency described in paragraph (1) may award not more than 15 per-
21 cent of the funds allocated for the SBIR program of the Federal agen-
22 cy to small business concerns that are majority-owned by multiple ven-
23 ture capital operating companies, hedge funds, or private equity firms
24 through competitive, merit-based procedures that are open to all eligi-
25 ble small business concerns.

26 (b) DETERMINATION.—A written determination described in this sub-
27 section is a written determination by the head of a Federal agency that ex-
28 plains how the use of the authority under subsection (a) will—

29 (1) induce additional venture capital, hedge fund, or private equity
30 firm funding of small business innovations;

31 (2) substantially contribute to the mission of the Federal agency;

32 (3) demonstrate a need for public research; and

33 (4) otherwise fulfill the capital needs of small business concerns for
34 additional financing for SBIR projects.

35 (c) REGISTRATION.—A small business concern that is majority-owned by
36 multiple venture capital operating companies, hedge funds, or private equity
37 firms and qualified for participation in the program authorized under sub-
38 section (a) shall—

39 (1) register with the Administrator on the date on which the small
40 business concern submits an application for an award under the SBIR
41 program; and

1 (2) indicate in any SBIR proposal that the small business concern
2 is registered under paragraph (1) as being majority-owned by multiple
3 venture capital operating companies, hedge funds, or private equity
4 firms.

5 (d) COMPLIANCE.—The head of a Federal agency that makes an award
6 under this section during a fiscal year shall collect and submit to the Ad-
7 ministrator data relating to the number and dollar amount of phase I
8 awards, phase II awards, and any other category of awards by the Federal
9 agency under the SBIR program during that fiscal year.

10 (e) ENFORCEMENT.—If a Federal agency awards more than the percent-
11 age of the funds allocated for the SBIR program of the Federal agency au-
12 thorized under subsection (a) for a purpose described in that subsection, the
13 head of the Federal agency shall transfer an amount equal to the amount
14 awarded in excess of the amount authorized under that subsection to the
15 funds for general SBIR programs from the non-SBIR and non-STTR re-
16 search and development funds of the Federal agency not later than 180
17 days after the date on which the Federal agency made the award that
18 caused the total awarded under that subsection to be more than the amount
19 authorized under that subsection for a purpose described in that subsection.

20 (f) FINAL DECISIONS ON APPLICATIONS UNDER THE SBIR PROGRAM.—

21 (1) DEFINITION OF COVERED SMALL BUSINESS CONCERN.—In this
22 subsection, the term “covered small business concern” means a small
23 business concern that—

24 (A) was not majority-owned by multiple venture capital operat-
25 ing companies, hedge funds, or private equity firms on the date
26 on which the small business concern submitted an application in
27 response to a solicitation under an SBIR program; and

28 (B) on the date of the award under the SBIR program, is ma-
29 jority-owned by multiple venture capital operating companies,
30 hedge funds, or private equity firms.

31 (2) IN GENERAL.—If a Federal agency does not make an award
32 under a solicitation under an SBIR program before the date that is
33 9 months after the date on which the period for submitting applications
34 under the solicitation ends—

35 (A) a covered small business concern is eligible to receive the
36 award, without regard to whether the covered small business con-
37 cern meets the requirements for receiving an award under the
38 SBIR program for a small business concern that is majority-
39 owned by multiple venture capital operating companies, hedge
40 funds, or private equity firms, if the covered small business con-
41 cern meets all other requirements for such an award; and

1 (B) the head of the Federal agency shall transfer an amount
2 equal to any amount awarded to a covered small business concern
3 under the solicitation to the funds for general SBIR programs
4 from the non-SBIR and non-STTR research and development
5 funds of the Federal agency, not later than 90 days after the date
6 on which the Federal agency makes the award.

7 (g) EVALUATION CRITERIA.—A Federal agency shall not use investment
8 of venture capital or investment from hedge funds or private equity firms
9 as a criterion for the award of contracts under the SBIR program or STTR
10 program.

11 (h) ASSISTANCE IN DETERMINING AFFILIATION

12 (1) CLEAR EXPLANATION REQUIREMENT.—The Administrator shall
13 post on the SBA website (with a direct link displayed on the homepage
14 of the SBA website or the SBIR and STTR websites of the SBA)—

15 (A) a clear explanation of the SBIR and STTR affiliation rules
16 under part 121 of title 13, Code of Federal Regulations (or any
17 successor regulation); and

18 (B) contact information for SBA officers or employees who—

19 (i) on request, shall review an issue relating to the rules
20 described in subparagraph (A); and

21 (ii) shall respond to a request under subparagraph (A) not
22 later than 20 business days after the date on which the re-
23 quest is received.

24 (2) INCLUSION OF AFFILIATION RULES FOR CERTAIN SMALL BUSI-
25 NESS CONCERNS.—On and after the date on which the final regulations
26 under subsection (i) are prescribed, the Administrator shall post on the
27 SBA website information relating to the regulations, in accordance with
28 paragraph (1).

29 (i) REGULATIONS.—

30 (1) STATEMENT OF CONGRESSIONAL INTENT.—It is the intent of
31 Congress that the Administrator should prescribe regulations to carry
32 out this section that—

33 (A) permit small business concerns that are majority-owned by
34 multiple venture capital operating companies, hedge funds, or pri-
35 vate equity firms to participate in the SBIR program in accord-
36 ance with this section;

37 (B) provide specific guidance for small business concerns that
38 are majority-owned by multiple venture capital operating compa-
39 nies, hedge funds, or private equity firms with regard to eligibility,
40 participation, and affiliation rules; and

1 (C) preserve and maintain the integrity of the SBIR program
2 as a program for small business concerns in the United States by
3 prohibiting large businesses or large entities or foreign-owned
4 businesses or foreign-owned entities from participation in the
5 SBIR.

6 (2) REGULATIONS.—The regulations at sections 121.103 and
7 121.702 of title 13, Code of Federal Regulations (or any successor reg-
8 ulations), shall provide for participation in the SBIR program, solely
9 under authority of this section, by small business concerns that are ma-
10 jority-owned by multiple venture capital operating companies, hedge
11 funds, or private equity firms in the SBIR program.

12 (3) CONTENTS.—

13 (A) IN GENERAL.—The regulations shall permit participation by
14 an applicant that is majority-owned by multiple venture capital op-
15 erating companies, hedge funds, or private equity firms in the
16 SBIR program in accordance with this section unless the Adminis-
17 trator determines—

18 (i) in accordance with the size standards established under
19 subparagraph (B), that the applicant—

20 (I) is a large business or large entity; or

21 (II) is majority-owned or controlled by a large busi-
22 ness or large entity; or

23 (ii) in accordance with the criteria established under sub-
24 paragraph (C), that the applicant—

25 (I) is a foreign-owned business or a foreign entity or
26 is not a citizen of the United States or alien lawfully ad-
27 mitted for permanent residence; or

28 (II) is majority-owned or controlled by a foreign-owned
29 business, foreign entity, or person who is not a citizen
30 of the United States or alien lawfully admitted for per-
31 manent residence.

32 (B) SIZE STANDARDS.—Under the authority to establish size
33 standards under paragraphs (1) through (4) of section 101103(c)
34 of this title, the Administrator shall, in accordance with paragraph
35 (1) of this subsection, establish size standards for applicants seek-
36 ing to participate in the SBIR program solely under the authority
37 under this section.

38 (C) CRITERIA FOR DETERMINING FOREIGN OWNERSHIP.—The
39 Administrator shall establish criteria for determining whether an
40 applicant meets the requirements under subparagraph (A)(ii), and,

1 in establishing the criteria, shall consider whether the criteria
2 should include—

3 (i) whether the applicant is at least 51 percent owned or
4 controlled by citizens of the United States or domestic ven-
5 ture capital operating companies, hedge funds, or private eq-
6 uity firms;

7 (ii) whether the applicant is domiciled in the United States;
8 and

9 (iii) whether the applicant is a direct or indirect subsidiary
10 of a foreign-owned firm, including whether the criteria should
11 include that an applicant is a direct or indirect subsidiary of
12 a foreign-owned entity if—

13 (I) any venture capital operating company, hedge
14 fund, or private equity firm that owns more than 20 per-
15 cent of the applicant is a direct or indirect subsidiary of
16 a foreign-owned entity; or

17 (II) in the aggregate, entities that are direct or indi-
18 rect subsidiaries of foreign-owned entities own more than
19 49 percent of the applicant.

20 (D) CRITERIA FOR DETERMINING AFFILIATION.—The Adminis-
21 trator shall establish criteria, in accordance with paragraph (1),
22 for determining whether an applicant is affiliated with a venture
23 capital operating company, hedge fund, private equity firm, or any
24 other business that the venture capital operating company, hedge
25 fund, or private equity firm has financed and, in establishing the
26 criteria, shall specify that—

27 (i) if a venture capital operating company, hedge fund, or
28 private equity firm that is determined to be affiliated with an
29 applicant is a minority investor in the applicant, the portfolio
30 companies of the venture capital operating company, hedge
31 fund, or private equity firm shall not be determined to be af-
32 filiated with the applicant, unless—

33 (I) the venture capital operating company, hedge fund,
34 or private equity firm owns a majority of the portfolio
35 company; or

36 (II) the venture capital operating company, hedge
37 fund, or private equity firm holds a majority of the seats
38 on the board of directors of the portfolio company;

39 (ii) subject to clause (i), the Administrator retains the au-
40 thority to determine whether a venture capital operating com-

pany, hedge fund, or private equity firm is affiliated with an applicant, including establishing other criteria;

(iii) the Administrator shall not determine that a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based solely on 1 or more shared investors; and

(iv) subject to clauses (i), (ii), and (iii), the Administrator retains the authority to determine whether a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based on factors independent of whether there is a shared investor, such as whether there are contractual obligations between the portfolio company and the applicant.

§ 263110. Assistance for administrative, oversight, and contract processing costs

(a) IN GENERAL.—Subject to subsection (c), for fiscal years 2013, 2014, and 2015, the Administrator shall allow an SBIR agency to use not more than 3 percent of the funds allocated to the SBIR program of the SBIR agency for—

(1) administering the SBIR program or STTR program of the SBIR agency;

(2) providing outreach and technical assistance relating to the SBIR program or STTR program of the SBIR agency, including technical assistance site visits, personnel interviews, and national conferences;

(3) implementing commercialization and outreach initiatives that were not in effect on December 31, 2011;

(4) carrying out the program under section 263314(a) of this title;

(5) carrying out activities relating to oversight and congressional reporting, including waste, fraud, and abuse prevention activities;

(6) carrying out targeted reviews of recipients of awards under the SBIR program or STTR program of the SBIR agency that the head of the SBIR agency determines are at high risk for fraud, waste, or abuse to ensure compliance with requirements of the SBIR program or STTR program, respectively;

(7) implementing oversight and quality control measures, including verification of reports and invoices and cost reviews;

(8) carrying out section 263109 of this title;

(9) paying contract processing costs relating to the SBIR program or STTR program of the SBIR agency; and

(10) providing funding for additional personnel and assistance with application reviews.

1 (b) OUTREACH AND TECHNICAL ASSISTANCE.—

2 (1) IN GENERAL.—Except as provided in paragraph (2), an SBIR
3 agency participating in the program under this section shall use a por-
4 tion of the funds authorized for uses under subsection (a) to carry out
5 the policy directive required under section 263104(b)(12)(A) of this
6 title and to increase the participation of States with respect to which
7 a low level of SBIR awards have historically been awarded.

8 (2) WAIVER.—An SBIR agency may request the Administrator to
9 waive the requirement under paragraph (1). Such a request shall in-
10 clude an explanation of why the waiver is necessary. The Administrator
11 may grant the waiver based on a determination that—

12 (A) the SBIR agency has demonstrated a sufficient need for the
13 waiver;

14 (B) the outreach objectives of the SBIR agency are being met;
15 and

16 (C) there is increased participation by States with respect to
17 which a low level of SBIR awards have historically been awarded.

18 (c) PERFORMANCE CRITERIA.—A Federal agency shall not use funds as
19 authorized under subsection (a) until after the effective date of performance
20 criteria, which the Administrator shall establish, to measure any benefits of
21 using funds as authorized under subsection (a) and to assess continuation
22 of the authority under subsection (a).

23 (d) COORDINATION WITH INSPECTOR GENERAL.—The head of an SBIR
24 agency shall coordinate the activities funded under paragraph (5), (6), or
25 (7) of subsection (a) with the Inspector General of the SBIR agency, when
26 appropriate. An SBIR agency that allocates more than \$50,000,000 to the
27 SBIR program of the SBIR agency for a fiscal year may share that funding
28 with its Inspector General when the Inspector General performs those activi-
29 ties.

30 (e) RULES.—The Administrator shall issue rules to carry out this section.

31 (f) REPORTING.—The Administrator shall collect data and provide to the
32 Committee on Small Business and Entrepreneurship of the Senate and the
33 Committee on Small Business, Committee on Science, Space, and Tech-
34 nology, and Committee on Appropriations of the House of Representatives
35 a report on the use of funds under this section, including funds used to
36 achieve the objectives of subsection (b)(1) and any use of the waiver author-
37 ity under subsection (b)(2).

38 **§ 263111. Reports by Federal agencies**

39 (a) ANNUAL REPORT.—An SBIR agency shall annually submit to the Ad-
40 ministrator and the Office of Science and Technology Policy a report on the
41 Federal agency's SBIR program.

1 (b) REPORTING OF AWARDS MADE FROM SINGLE PROPOSALS, AWARDS
2 TO MULTIPLE AWARD WINNERS, AND AWARDS TO CRITICAL TECHNOLOGY
3 TOPICS.—

4 (1) SINGLE PROPOSAL.—If an SBIR agency makes an award with
5 respect to an SBIR program solicitation topic or subtopic for which the
6 Federal agency received only 1 proposal, the SBIR agency shall provide
7 written justification for making the award in its next quarterly report
8 to the Administrator and in the SBIR agency's next annual report re-
9 quired under subsection (a).

10 (2) MULTIPLE AWARDS.—An SBIR agency shall include in its next
11 annual report required under subsection (a) an accounting of the
12 awards that the SBIR agency has made for phase I of its SBIR pro-
13 gram during the reporting period to entities that have received more
14 than 15 awards for phase II of the SBIR program during the preced-
15 ing 5 fiscal years.

16 (3) CRITICAL TECHNOLOGY AWARDS.—

17 (A) IN GENERAL.—An SBIR agency shall include in its next an-
18 nual report required under subsection (a) an accounting of the
19 number of awards that the SBIR agency has made to critical tech-
20 nology topics described in section 263102(a)(3) of this title.

21 (B) CONTENTS.—An accounting under subparagraph (A)
22 shall—

23 (i) include an identification of the specific critical tech-
24 nologies topics; and

25 (ii) disclose the percentage by number and dollar amount
26 of the SBIR agency's total SBIR awards to critical tech-
27 nology topics.

28 (c) NUMBER AND DOLLAR AMOUNT OF AWARDS.—

29 (1) IN GENERAL.—A Federal agency required by section 263101 of
30 this title to have an SBIR program or to establish goals shall annually
31 submit to the Administrator a report that discloses—

32 (A) the number of awards (including awards under section
33 263314 of this title) pursuant to grants, contracts, or cooperative
34 agreements over \$10,000 in amount; and

35 (B) the dollar value of all such awards.

36 (2) CONTENTS.—A report under paragraph (1) shall identify SBIR
37 awards and compare the number and amount of those awards with
38 awards to other than small business concerns.

39 (3) CALCULATION OF EXTRAMURAL BUDGET.—

40 (A) METHODOLOGY.—Not later than 4 months after the date
41 of enactment of each appropriations Act for an SBIR agency, the

1 SBIR agency shall submit to the Administrator a report that in-
2 cludes a description of the methodology used for calculating the
3 amount of the extramural budget of that SBIR agency.

4 (B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall in-
5 clude an analysis of the methodology received from each SBIR
6 agency in the report required by section 107110(a) of this title.

7 **§ 263112. Termination**

8 The authorization to carry out an SBIR program under this chapter ter-
9 minates on September 30, 2017.

10 **Subchapter II—STTR Programs**

11 **§ 263201. Required expenditure amounts**

12 (a) STTR PROGRAM BUDGET.—

13 (1) IN GENERAL.—With respect to each fiscal year through fiscal
14 year 2017, a Federal agency that has an extramural budget for re-
15 search or research and development in excess of \$1,000,000,000 for the
16 fiscal year shall expend with small business concerns not less than the
17 percentage of the extramural budget specified in paragraph (2), specifi-
18 cally in connection with an STTR program that meets the requirements
19 of this division (including any policy directive under section 263203 of
20 this title).

21 (2) EXPENDITURE AMOUNTS.—The percentage of the extramural
22 budget required to be expended by an agency in accordance with para-
23 graph (1) shall be—

24 (A) 0.35 percent for each of fiscal years 2012 and 2013;

25 (B) 0.40 percent for each of fiscal years 2014 and 2015; and

26 (C) 0.45 percent for fiscal year 2016 and each fiscal year there-
27 after.

28 (b) LIMITATIONS.—An STTR agency shall not—

29 (1) use any of its STTR program budget established under sub-
30 section (a) for the purpose of funding—

31 (A) administrative costs of the STTR program, including costs
32 associated with salaries and expenses; or

33 (B) in the case of a small business concern or a research insti-
34 tution, costs associated with salaries, expenses, and administrative
35 overhead (other than direct or indirect costs allowable under
36 guidelines of the Office of Management and Budget and the Gov-
37 ernmentwide Federal Acquisition Regulation; or

38 (2) make available for the purpose of meeting the requirements of
39 subsection (a) an amount of its extramural budget for basic research
40 that exceeds the percentage specified in subsection (a).

1 (c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agree-
2 ment with a small business concern for research or research and develop-
3 ment that results from a competitive or single source selection other than
4 an STTR program shall not be considered to meet any portion of the per-
5 centage requirement of subsection (a).

6 **§ 263202. Administration by Federal agencies**

7 An STTR agency shall—

8 (1) unilaterally determine categories of projects to be included in its
9 STTR program;

10 (2) issue STTR program solicitations in accordance with a schedule
11 determined cooperatively with the Administrator;

12 (3) unilaterally determine research topics within the Federal agency's
13 STTR program solicitations, giving special consideration to broad re-
14 search topics and to topics that further 1 or more critical technologies,
15 as identified by—

16 (A) the National Critical Technologies Panel in the reports re-
17 quired under section 603 of the National Science and Technology
18 Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)
19 (as in effect before January 1, 2001); or

20 (B) the Secretary of Defense, in the reports required under sec-
21 tion 2522 of title 10 (as in effect before February 10, 1996);

22 (4)(A) unilaterally receive and evaluate proposals resulting from
23 STTR program solicitations; and

24 (B) make a final decision on each proposal submitted under the
25 STTR program—

26 (i) not later than 1 year after the date on which the applicable
27 solicitation closes, if with respect to the National Institutes of
28 Health or the National Science Foundation, or 90 days after the
29 date on which the applicable solicitation closes, if with respect to
30 any STTR participating agency; or

31 (ii) if the Administrator authorizes an extension for a solicita-
32 tion, not later than 90 days after the date that would be applicable
33 to the STTR participating agency under clause (i);

34 (5)(A) unilaterally select awardees for its STTR program funding
35 agreements; and

36 (B) inform each awardee under a funding agreement, to the extent
37 possible, of the expenses of the awardee that will be allowable under
38 the funding agreement;

39 (6) administer its own STTR program funding agreements (or dele-
40 gate such administration to another Federal agency);

1 (7)(A) make payments to recipients of STTR program funding
2 agreements on the basis of progress toward or completion of the fund-
3 ing agreement requirements; and

4 (B) in all cases, make payment to recipients under funding agree-
5 ments in full, subject to audit, on or before the last day of the 12-
6 month period beginning on the date of the completion of the funding
7 agreement requirements;

8 (8)(A) include as part of its annual performance plan as required by
9 subsections (a) and (b) of section 1115 of title 31 a section on its
10 STTR program; and

11 (B) submit that section to the Committee on Small Business and
12 Entrepreneurship of the Senate and the Committee on Science and the
13 Committee on Small Business of the House of Representatives;

14 (9) collect annually, and maintain in a common format in accordance
15 with the simplified reporting requirements under section 263304 of this
16 title, such information from applicants and awardees as is necessary to
17 assess STTR program outputs and outcomes, including information
18 necessary to maintain the database under section 263301 of this title,
19 including—

20 (A) whether an applicant or awardee—

21 (i) has venture capital, hedge fund, or private equity firm
22 investment or is majority-owned by multiple venture capital
23 operating companies, hedge funds, or private equity firms
24 and, if so—

25 (I) the amount of venture capital, hedge fund, or pri-
26 vate equity firm investment that the applicant or award-
27 ee has received as of the date of the application or
28 award, as applicable; and

29 (II) the amount of additional capital that the appli-
30 cant or awardee has invested in the STTR technology;

31 (ii) has an investor that—

32 (I) is an individual who is not a citizen of the United
33 States or a lawful permanent resident of the United
34 States and, if so, the name of any such individual; or

35 (II) is a person that is not an individual and is not
36 organized under the laws of a State or the United States
37 and, if so, the name of any such person;

38 (iii) is owned by a woman or has a woman as a principal
39 investor;

1 (iv) is owned by a socially or economically disadvantaged
2 individual or has a socially or economically disadvantaged in-
3 dividual as a principal investor;

4 (v) is a faculty member or a student of an institution of
5 higher education (as defined in section 101 of the Higher
6 Education Act of 1965 (20 U.S.C. 1001); or

7 (vi) is located in a State in which the total value of con-
8 tracts awarded to small business concerns under all STTR
9 programs is less than the total value of contracts awarded to
10 small business concerns in a majority of other States, as de-
11 termined by the Administrator in biennial fiscal years, begin-
12 ning with fiscal year 2008, based on the most recent statistics
13 compiled by the Administrator;

14 (B) if an awardee receives an award in an amount that is more
15 than the award guidelines under this division, a statement from
16 the agency that justifies the award amount; and

17 (C) data with respect to the FAST program;

18 (10) adopt the agreement developed by the Administrator under sec-
19 tion 263204 of this title as the STTR agency's model agreement for
20 allocating between small business concerns and research institutions—

21 (A) intellectual property rights; and

22 (B) rights, if any, to carry out follow-on research, development,
23 or commercialization;

24 (11) develop, in consultation with the Office of Federal Procurement
25 Policy and the Office of Government Ethics, procedures to ensure that
26 federally funded research and development centers that participate in
27 STTR program agreements—

28 (A) are free from organizational conflicts of interests relative to
29 the program;

30 (B) do not use privileged information gained through work per-
31 formed for an STTR agency or private access to STTR agency
32 personnel in the development of an STTR program proposal; and

33 (C) use outside peer review, as appropriate;

34 (12) develop procedures for assessing the commercial merit and fea-
35 sibility of STTR program proposals, as evidenced by—

36 (A) the small business concern's record of successfully commer-
37 cializing STTR program research or other research;

38 (B) the existence of phase II funding commitments from private
39 sector or non-STTR program funding sources;

40 (C) the existence of phase III follow-on commitments for the
41 subject of the research; and

1 (D) the presence of other indicators of the commercial potential
2 of the idea;

3 (13) implement an outreach program to research institutions and
4 small business concerns for the purpose of enhancing its STTR pro-
5 gram, in conjunction with any such outreach done for purposes of the
6 STTR agency's SBIR program;

7 (14) provide for and fully implement the tenets of Executive Order
8 13329 (Encouraging Innovation in Manufacturing);

9 (15) provide timely notice to the Administrator of any case or con-
10 troversy before any Federal judicial or administrative tribunal concern-
11 ing the STTR program of the Federal agency; and

12 (16) annually submit to the Administrator and the Office of Science
13 and Technology Policy a report on its STTR program.

14 **§ 263203. Policy directive**

15 (a) ISSUANCE.—The Administrator shall issue a policy directive for the
16 general conduct of the STTR programs within the Federal Government.

17 (b) CONSULTATION.—The STTR program policy directive shall be issued
18 after consultation with—

19 (1) the heads of each of the STTR agencies;

20 (2) the Under Secretary of Commerce for Intellectual Property and
21 Director of the United States Patent and Trademark Office; and

22 (3) the Administrator for Federal Procurement Policy.

23 (c) CONTENTS.—The policy directive required by subsection (a) shall pro-
24 vide for—

25 (1) simplified, standardized, and timely STTR program solicitations;

26 (2) a simplified, standardized funding process that provides for—

27 (A) the timely receipt and review of proposals;

28 (B) outside peer review, if appropriate;

29 (C) protection of proprietary information provided in proposals;

30 (D) selection of awardees;

31 (E) retention by a small business concern of the rights to data
32 generated by the small business concern in the performance of an
33 STTR award for a period of not less than 4 years;

34 (F) continued use by a small business concern, as a directed
35 bailment, of any property transferred by a Federal agency to the
36 small business concern in phase II of the Federal agency's STTR
37 program for a period of not less than 2 years, beginning on the
38 initial date of the small business concern's participation in phase
39 III of the STTR program;

40 (G) cost sharing;

41 (H) cost principles and payment schedules; and

1 (I)(i) 1-year awards for phase I of an STTR program, generally
2 not to exceed \$150,000 (which amount the Administrator shall ad-
3 just annually for inflation), greater or lesser amounts to be award-
4 ed at the discretion of the awarding Federal agency, and shorter
5 or longer periods of time to be approved at the discretion of the
6 awarding agency where appropriate for a particular project; and

7 (ii) 2-year awards for phase II of the STTR program, generally
8 not to exceed \$1,000,000 (which amount the Administrator shall
9 adjust annually for inflation), greater or lesser amounts to be
10 awarded at the discretion of the awarding Federal agency, and
11 shorter or longer periods of time to be approved at the discretion
12 of the awarding agency where appropriate for a particular project;

13 (3) minimizing the regulatory burdens associated with participation
14 in an STTR program;

15 (4) guidelines for a model agreement, to be used by all Federal agen-
16 cies, for allocating between small business concerns and research insti-
17 tutions—

18 (A) intellectual property rights; and

19 (B) rights, if any, to carry out follow-on research, development,
20 or commercialization;

21 (5) procedures to ensure that—

22 (A) a recipient of an STTR award is a small business concern;
23 and

24 (B) the small business concern exercises management and con-
25 trol of the performance of the STTR program funding agreement
26 under a business plan providing for the commercialization of the
27 technology that is the subject matter of the award; and

28 (6) procedures to ensure, to the extent practicable, that a Federal
29 agency that intends to pursue research, development, or production of
30 a technology developed by a small business concern under an STTR
31 program enters into a follow-on, non-STTR program funding agree-
32 ment with the small business concern for the research, development, or
33 production.

34 (d) RIGHTS TO DATA.—The rights provided for under subsection
35 (c)(2)(E) shall apply to all Federal funding awards under this division, in-
36 cluding phase I, phase II, and phase III awards.

37 **§ 263204. Model agreement for intellectual property rights**

38 (a) IN GENERAL.—The Administrator shall promulgate regulations estab-
39 lishing a single model agreement for use in an STTR program that allocates
40 between small business concerns and research institutions—

41 (1) intellectual property rights; and

1 (2) rights, if any, to carry out follow-on research, development, or
2 commercialization.

3 (b) OPPORTUNITY FOR COMMENT.—In promulgating regulations under
4 subsection (a), the Administrator shall provide to affected Federal agencies,
5 small business concerns, research institutions, and other interested parties
6 the opportunity to submit written comments.

7 **§ 263205. Phase 0 proof of concept partnership pilot pro-**
8 **gram**

9 (a) DEFINITIONS.—In this section:

10 (1) DIRECTOR.—The term “Director” means the Director of the Na-
11 tional Institutes of Health.

12 (2) PARTICIPATING RESEARCH INSTITUTION.—The term “participat-
13 ing research institution” means a university or other research institu-
14 tion that participates in the National Institutes of Health’s STTR pro-
15 gram.

16 (3) PILOT PROGRAM.—The term “pilot program” means the proof of
17 concept partnership pilot program under subsection (b).

18 (b) IN GENERAL.—The Director may use \$5,000,000 of the funds allo-
19 cated under section 263201(a) of this title for a proof of concept partner-
20 ship pilot program to accelerate the creation of small businesses and the
21 commercialization of research innovations from participating research insti-
22 tutions. To implement the pilot program, the Director shall award, through
23 a competitive, merit-based process, grants to participating research institu-
24 tions. The grants shall be used only to administer proof of concept partner-
25 ship awards in conformity with this section.

26 (c) PROOF OF CONCEPT PARTNERSHIPS.—

27 (1) IN GENERAL.—A proof of concept partnership shall be estab-
28 lished by a participating research institution to award grants to indi-
29 vidual researchers. The grants should provide researchers with the ini-
30 tial investment and the resources to support the proof of concept work
31 and commercialization mentoring needed to translate promising re-
32 search projects and technologies into a viable company. The work may
33 include technical validations, market research, clarifying intellectual
34 property rights position and strategy, and investigating commercial or
35 business opportunities.

36 (2) AWARD GUIDELINES.—The administrator of a proof of concept
37 partnership shall award grants in accordance with the following guide-
38 lines:

39 (A) OVERSIGHT PROCESS.—The proof of concept partnership
40 shall use a market-focused project management oversight process,
41 including—

- 1 (i) a rigorous, diverse review board comprised of local ex-
2 perts in translational and proof of concept research, including
3 industry, startup, venture capital, technical, financial, and
4 business experts and university technology transfer officials;
5 (ii) technology validation milestones focused on market fea-
6 sibility;
7 (iii) simple reporting effective at redirecting projects; and
8 (iv) the willingness to reallocate funding from failing
9 projects to projects with more potential.

10 (B) MAXIMUM AMOUNT TOWARD INDIVIDUAL PROPOSAL.—Not
11 more than \$100,000 shall be awarded toward an individual pro-
12 posal.

13 (3) EDUCATIONAL RESOURCES AND GUIDANCE.—The administrator
14 of a proof of concept partnership shall make educational resources and
15 guidance available to researchers attempting to commercialize their in-
16 novations.

17 (d) AWARDS BY THE DIRECTOR TO PARTICIPATING RESEARCH INSTITU-
18 TIONS.—

19 (1) AMOUNT.—The Director may make an award to a participating
20 research institution for not more than \$1,000,000 per year for not
21 more than 3 years.

22 (2) CRITERIA.—In determining which participating research institu-
23 tions receive pilot program grants, the Director shall consider, in addi-
24 tion to any other criteria that the Director determines to be necessary,
25 the extent to which participating research institutions—

26 (A) have an established and proven technology transfer or com-
27 mercialization office and have a plan for engaging the commer-
28 cialization office in the pilot program's implementation;

29 (B) have demonstrated a commitment to local and regional eco-
30 nomic development;

31 (C) are located in diverse geographies and are of diverse sizes;

32 (D) are able to assemble project management boards comprised
33 of industry, startup, venture capital, technical, financial, and busi-
34 ness experts;

35 (E) have an intellectual property rights strategy or office; and

36 (F) demonstrate a plan for sustainability beyond the duration
37 of the award.

38 (e) NO BASIC RESEARCH; EVALUATION OF COMMERCIAL POTENTIAL OF
39 EXISTING DISCOVERIES.—The funds for the pilot program shall not be used
40 for basic research, but shall be used to evaluate the commercial potential
41 of existing discoveries, including—

- 1 (1) proof of concept research or prototype development; and
2 (2) activities that contribute to determining a project's commer-
3 cialization path, to include technical validations, market research, clari-
4 fying intellectual property rights, and investigating commercial and
5 business opportunities.
- 6 (f) NO ACQUISITION OF RESEARCH EQUIPMENT OR SUPPLIES.—The
7 funds for the pilot program shall not be used to fund the acquisition of re-
8 search equipment or supplies unrelated to commercialization activities.
- 9 (g) EVALUATIVE REPORT.—
- 10 (1) IN GENERAL.—The Director shall submit to the Committee on
11 Science, Space, and Technology and Committee on Small Business of
12 the House of Representatives and the Committee on Small Business
13 and Entrepreneurship of the Senate an evaluative report regarding the
14 activities of the pilot program.
- 15 (2) CONTENTS.—The report shall include—
- 16 (A) a detailed description of the institutional and proposal selec-
17 tion process;
- 18 (B) an accounting of the funds used in the pilot program;
- 19 (C) a detailed description of the pilot program, including incen-
20 tives and activities undertaken by review board experts;
- 21 (D) a detailed compilation of results achieved by the pilot pro-
22 gram, including the number of small business concerns included,
23 the number of business packages developed, and the number of
24 projects that progressed into subsequent STTR phases; and
- 25 (E) an analysis of the pilot program's effectiveness with sup-
26 porting data.
- 27 (h) TERMINATION.—The pilot program shall terminate at the end of fis-
28 cal year 2017.

29 **Subchapter III—Provisions Relating to**
30 **Both SBIR Programs and STTR Programs**
31 **§ 263301. Database**

- 32 (a) PUBLIC DATABASE.—The Administrator shall develop, maintain, and
33 make available to the public a searchable, up-to-date, electronic database
34 that includes—
- 35 (1) the name, size, location, and an identifying number assigned by
36 the Administrator of each small business concern that has received a
37 phase I or phase II SBIR program or STTR award from a Federal
38 agency;
- 39 (2) a description of each phase I or phase II SBIR program or
40 STTR award received by that small business concern, including—

1 (A) an abstract of the project funded by the award, excluding
2 any information identified by the small business concern as propri-
3 etary information;

4 (B) the Federal agency making the award; and

5 (C) the date and amount of the award;

6 (3) an identification of any business concern or subsidiary estab-
7 lished for the commercial application of a product or service for which
8 an SBIR program or STTR award is made;

9 (4) information regarding mentors and mentoring networks, as re-
10 quired by section 263305(f)(3) of this title;

11 (5) with respect to assistance under STTR program—

12 (A) whether the small business concern or the research institu-
13 tion initiated their collaboration on each assisted STTR project;

14 (B) whether the small business concern or the research institu-
15 tion originated any technology relating to the assisted STTR
16 project;

17 (C) the length of time it took to negotiate any licensing agree-
18 ment between the small business concern and the research institu-
19 tion under each assisted STTR project; and

20 (D) how the proceeds from commercialization, marketing, or
21 sale of technology resulting from each assisted STTR project were
22 allocated (by percentage) between the small business concern and
23 the research institution; and

24 (6) for each small business concern that receives a phase I or phase
25 II SBIR award or STTR award from a Federal agency, whether the
26 small business concern—

27 (A) has venture capital, hedge fund, or private equity firm in-
28 vestment and, if so, whether the small business concern is reg-
29 istered as majority-owned by multiple venture capital operating
30 companies, hedge funds, or private equity firms as required under
31 section 263109(c) of this title;

32 (B) is owned by a woman or has a woman as a principal inves-
33 tor;

34 (C) is owned by a socially or economically disadvantaged indi-
35 vidual or has a socially or economically disadvantaged individual
36 as a principal investor;

37 (D) is owned by a faculty member or a student of an institution
38 of higher education (as defined in section 101 of the Higher Edu-
39 cation Act of 1965 (20 U.S.C. 1001); or

40 (E) received assistance under the FAST Program.

41 (b) GOVERNMENT DATABASE.—

1 (1) IN GENERAL.—The Administrator, in consultation with SBIR
2 agencies and STTR agencies, shall develop and maintain a database
3 that—

4 (A) contains for each small business concern that applies for,
5 submits a proposal for, or receives an award under phase I or
6 phase II of the SBIR program or STTR program—

7 (i) the name, size, and location of, and the identifying
8 number assigned by the Administrator to, the small business
9 concern;

10 (ii) an abstract of the applicable project;

11 (iii) the specific aims of the project;

12 (iv) the number of employees of the small business concern;

13 (v) the names and titles of the key individuals that will
14 carry out the project, the position each key individual holds
15 in the small business concern, and contact information for
16 each key individual;

17 (vi) the percentage of effort that each individual described
18 in clause (v) will contribute to the project;

19 (vii) whether the small business concern is majority-owned
20 by multiple venture capital operating companies, hedge funds,
21 or private equity firms; and

22 (viii) the Federal agency to which the application is made
23 and contact information for the person or office within the
24 Federal agency that is responsible for reviewing applications
25 and making awards under the SBIR program or STTR pro-
26 gram;

27 (B) contains for each phase II award made by a Federal agen-
28 cy—

29 (i) information collected in accordance with subsection (c)
30 on revenue from the sale of new products or services resulting
31 from the research conducted under the award;

32 (ii) information collected in accordance with subsection (c)
33 on additional investment from any source, other than phase
34 I or phase II SBIR program or STTR awards, to further the
35 research and development conducted under the award; and

36 (iii) any other information received in connection with the
37 award that the Administrator, in conjunction with the SBIR
38 program and STTR program managers of Federal agencies,
39 considers relevant and appropriate;

1 (C) includes any narrative information that a small business
2 concern receiving a phase II award voluntarily submits to further
3 describe the outputs and outcomes of its awards;

4 (D) includes, for each awardee—

5 (i) the name, size, and location of, and any identifying
6 number assigned by the Administrator to, the awardee;

7 (ii) whether the awardee has venture capital, hedge fund,
8 or private equity firm investment and, if so—

9 (I) the amount of venture capital, hedge fund, or pri-
10 vate equity firm investment as of the date of the award;

11 (II) the percentage of ownership of the awardee held
12 by a venture capital operating company, hedge fund, or
13 private equity firm, including whether the awardee is
14 majority-owned by multiple venture capital operating
15 companies, hedge funds, or private equity firms; and

16 (III) the amount of additional capital that the awardee
17 has invested in the SBIR or STTR technology, which in-
18 formation shall be collected on an annual basis;

19 (iii) the names and locations of any affiliates of the award-
20 ee;

21 (iv) the number of employees of the awardee;

22 (v) the number of employees of the affiliates of the award-
23 ee; and

24 (vi) the names of, and the percentage of ownership of the
25 awardee held by—

26 (I) any individual who is not a citizen of the United
27 States or a lawful permanent resident of the United
28 States; or

29 (II) any person that is not an individual and is not or-
30 ganized under the laws of a State or the United States;

31 (E) includes any other data collected by or available to any Fed-
32 eral agency that the Federal agency considers may be useful for
33 SBIR program or STTR program evaluation; and

34 (F) includes a timely and accurate list of any individual or small
35 business concern that has participated in the SBIR program or
36 STTR program that has been—

37 (i) convicted of a fraud-related crime involving funding re-
38 ceived under the SBIR program or STTR program; or

39 (ii) found civilly liable for a fraud-related violation involv-
40 ing funding received under the SBIR program or STTR pro-
41 gram.

1 (2) USE.—The database under paragraph (1) shall be available for
2 use solely—

3 (A) for program evaluation purposes by the Federal Govern-
4 ment; or

5 (B) in accordance with policy directives issued by the Adminis-
6 trator, by other authorized persons that are subject to a use and
7 nondisclosure agreement with the Federal Government covering
8 the use of the database.

9 (c) UPDATING OF INFORMATION.—

10 (1) IN GENERAL.—A small business concern applying for a phase II
11 award under this division shall be required to update information in
12 the database established under this section for any prior phase II
13 award received by that small business concern.

14 (2) APPORTIONMENT.—In complying with this subsection, a small
15 business concern may apportion sales or additional investment informa-
16 tion relating to more than 1 phase II award among those awards, if
17 the small business concern notes the apportionment for each award.

18 (3) UPDATES AT TERMINATION.—

19 (A) IN GENERAL.—A small business concern receiving a phase
20 II award under this division shall update information in the data-
21 base concerning that award at the termination of the award pe-
22 riod.

23 (B) VOLUNTARY UPDATES.—An SBIR agency shall request a
24 small business concern described in subparagraph (A) to volun-
25 tarily update such information described in subparagraph (A) an-
26 nually after termination for a period of 5 years.

27 (4) GOVERNMENT DATABASE.—Not later than 60 days after the date
28 established by a Federal agency for submitting applications or propos-
29 als for a phase I or phase II award under the SBIR program or STTR
30 program, the head of the Federal agency shall submit to the Adminis-
31 trator the data required under subsection (b) with respect to each small
32 business concern that applies or submits a proposal for the phase I or
33 phase II award.

34 (d) PROTECTION OF INFORMATION.—Information provided under sub-
35 section (b) or (c) shall be considered privileged and confidential and not
36 subject to disclosure under section 552 of title 5.

37 (e) EFFECT OF INCLUSION OF INFORMATION IN DATABASE.—Inclusion
38 of information in the database under this section shall not be considered
39 to be publication for purposes of subsection (a) or (b) of section 102 of title
40 35.

1 **§ 263302. Phase III agreements**

2 (a) IN GENERAL.—In the case of a small business concern that is award-
3 ed a funding agreement for phase II of an SBIR program or STTR pro-
4 gram, a Federal agency may enter into a phase III agreement with the
5 small business concern for additional work to be performed during or after
6 phase II period.

7 (b) PROCEDURES.—The phase II funding agreement with the small busi-
8 ness concern may, at the discretion of the Federal agency awarding the
9 agreement, set out the procedures applicable to phase III agreements with
10 that Federal agency or any other Federal agency.

11 (c) INTELLECTUAL PROPERTY RIGHTS.—A funding agreement under an
12 SBIR program or STTR program shall include provisions setting forth the
13 respective rights of the United States and the small business concern with
14 respect to—

- 15 (1) intellectual property rights; and
16 (2) any right to carry out follow-on research.

17 (d) PHASE III AWARDS.—To the greatest extent practicable, a Federal
18 agency or Federal prime contractor shall issue a phase III award relating
19 to technology, including a sole source award, to the SBIR award recipient
20 or STTR award recipient that developed the technology.

21 **§ 263303. Inclusion of SBIR program and STTR program in-**
22 **formation in strategic plans**

23 Program information relating to SBIR programs and STTR programs
24 shall be included by a Federal agency in any update or revision required
25 of the Federal agency under section 306(b) of title 5.

26 **§ 263304. Reduction of paperwork and compliance burden**

27 (a) IN GENERAL.—

28 (1) STANDARDIZATION OF REPORTING REQUIREMENTS.—The Ad-
29 ministrators shall work with SBIR agencies and STTR agencies to
30 standardize reporting requirements for the collection of data from
31 SBIR program or STTR program applicants and awardees, including
32 data for inclusion in the database under section 263301 of this title,
33 taking into consideration the unique needs of each Federal agency, and
34 to the extent possible, permitting the updating of previously reported
35 information by electronic means.

36 (2) MINIMIZATION OF BURDEN.—The reporting requirements de-
37 scribed in paragraph (1) shall be designed to minimize the burden on
38 small business concerns.

39 (b) SIMPLIFICATION OF APPLICATION AND AWARD PROCESS.—After a
40 period of public comment, the Administrator shall issue regulations or
41 guidelines, taking into consideration the unique needs of each Federal agen-

1 ey, to ensure that each SBIR agency and STTR agency simplifies and
2 standardizes the program proposal, selection, contracting, compliance, and
3 audit procedures for the SBIR program or STTR program of the SBIR
4 agency or STTR agency (including procedures relating to overhead rates for
5 applicants and documentation requirements) to reduce the paperwork and
6 regulatory compliance burden on small business concerns applying to and
7 participating in the SBIR program or STTR program.

8 **§ 263305. FAST program**

9 (a) DEFINITIONS.—In this section:

10 (1) APPLICANT.—The term “applicant” means an entity, organiza-
11 tion, or individual that submits a proposal for an award or a cooper-
12 ative agreement under this section.

13 (2) BUSINESS ADVICE AND COUNSELING.—The term “business ad-
14 vice and counseling” means advice and assistance on matters described
15 in subsection (f) to small business concerns to guide small business
16 concerns through the SBIR program and STTR program process, from
17 application to award and successful completion of each phase of an
18 SBIR program or STTR program.

19 (3) MENTOR.—The term “mentor” means an individual described in
20 subsection (f).

21 (4) MENTORING NETWORK.—The term “mentoring network” means
22 an association, organization, coalition, or other entity (including an in-
23 dividual) that meets the requirements of subsection (f).

24 (5) RECIPIENT.—The term “recipient” means a person that receives
25 an award or becomes party to a cooperative agreement under this sec-
26 tion.

27 (6) STATE.—The term “State” means a State, the District of Co-
28 lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

29 (b) ESTABLISHMENT OF FAST PROGRAM.—The Administrator shall es-
30 tablish a Federal and State technology partnership program, to be known
31 as the FAST program, the purpose of which shall be to strengthen the tech-
32 nological competitiveness of small business concerns in the States.

33 (c) GRANTS AND COOPERATIVE AGREEMENTS.—

34 (1) JOINT REVIEW.—In carrying out the FAST program, the Admin-
35 istrator and the SBIR program managers at the National Science
36 Foundation and the Department of Defense shall jointly review propos-
37 als submitted by applicants and may make awards or enter into cooper-
38 ative agreements under this section based on the factors for consider-
39 ation specified in paragraph (2), to enhance or develop in a State—

40 (A) technology research and development by small business con-
41 cerns;

- 1 (B) technology transfer from university research to technology-
2 based small business concerns;
- 3 (C) technology deployment and diffusion benefiting small busi-
4 ness concerns;
- 5 (D) the technological capabilities of small business concerns
6 through the establishment or operation of consortia comprised of
7 entities, organizations, or individuals, including—
- 8 (i) State and local development agencies and entities;
9 (ii) representatives of technology-based small business con-
10 cerns;
11 (iii) industries and emerging companies;
12 (iv) universities; and
13 (v) small business development centers; and
- 14 (E) outreach, financial support, and technical assistance to
15 technology-based small business concerns participating in or inter-
16 ested in participating in an SBIR program, including initiatives—
- 17 (i) to make grants or loans to companies to pay a portion
18 or all of the cost of developing SBIR program proposals;
19 (ii) to establish or operate a mentoring network within the
20 FAST program to provide business advice and counseling
21 that will assist small business concerns that have been identi-
22 fied by FAST program participants, program managers of
23 participating SBIR agencies, the Administrator, or other enti-
24 ties that—
- 25 (I) are knowledgeable about the SBIR programs and
26 STTR programs as good candidates for SBIR programs
27 and STTR programs; and
- 28 (II) would benefit from mentoring, in accordance with
29 subsection (f);
- 30 (iii) to create or participate in a training program for indi-
31 viduals providing SBIR program outreach and assistance at
32 the State and local levels; and
- 33 (iv) to encourage the commercialization of technology devel-
34 oped through SBIR program funding.
- 35 (2) SELECTION CONSIDERATIONS.—In making awards or entering
36 into cooperative agreements under this section, the Administrator and
37 the SBIR program managers at the National Science Foundation and
38 the Department of Defense—
- 39 (A) may consider only proposals by applicants that intend to
40 use a portion of the Federal assistance provided under this section
41 to provide outreach, financial support, or technical assistance to

1 technology-based small business concerns participating in or inter-
2 ested in participating in an SBIR program; and

3 (B) shall consider, at a minimum—

4 (i) whether the applicant has demonstrated that the assist-
5 ance to be provided would address unmet needs of small busi-
6 ness concerns in the community, and whether it is important
7 to use Federal funding for the proposed activities;

8 (ii) whether the applicant has demonstrated that a need ex-
9 ists to increase the number or success of small high-tech-
10 nology businesses in the State, as measured by the number
11 of phase I and phase II SBIR awards that have historically
12 been received by small business concerns in the State;

13 (iii) whether the projected costs of the proposed activities
14 are reasonable;

15 (iv) whether the proposal integrates and coordinates the
16 proposed activities with other State and local programs assist-
17 ing small high-technology firms in the State;

18 (v) the manner in which the applicant will measure the re-
19 sults of the activities to be conducted; and

20 (vi) whether the proposal addresses the needs of—

21 (I) small business concerns owned and controlled by
22 women;

23 (II) small business concerns owned and controlled by
24 minorities; and

25 (III) small business concerns located in areas that
26 have historically not participated in the SBIR programs
27 and STTR programs.

28 (3) PROPOSAL LIMIT.—Not more than 1 proposal may be submitted
29 for inclusion in the FAST program to provide services in any 1 State
30 in any 1 fiscal year.

31 (4) PROCESS.—

32 (A) PROPOSALS AND APPLICATION.—A proposal or application
33 for assistance under this section shall be in such form and subject
34 to such procedures as the Administrator shall establish.

35 (B) REGULATIONS.—The Administrator shall promulgate regu-
36 lations establishing standards for the consideration of proposals
37 under paragraph (2), including standards regarding each of the
38 considerations described in paragraph (2)(B).

39 (d) COOPERATION AND COORDINATION.—In carrying out the FAST pro-
40 gram, the Administrator shall cooperate and coordinate with—

41 (1) SBIR agencies; and

1 (2) entities, organizations, and individuals actively engaged in en-
2 hancing or developing the technological capabilities of small business
3 concerns, including—

4 (A) State and local development agencies and entities;

5 (B) State committees established under the Experimental Pro-
6 gram to Stimulate Competitive Research of the National Science
7 Foundation established under section 113 of the National Science
8 Foundation Authorization Act of 1988 (42 U.S.C. 1862g);

9 (C) State science and technology councils; and

10 (D) representatives of technology-based small business concerns.

11 (e) REQUIREMENTS.—

12 (1) COMPETITIVE BASIS.—An award under this section shall be
13 made or a cooperative agreement under this section shall be entered
14 into on a competitive basis.

15 (2) MATCHING REQUIREMENTS.—

16 (A) AMOUNT OF NON-FEDERAL SHARE.—

17 (i) IN GENERAL.—The non-Federal share of the cost of an
18 activity (other than a planning activity) carried out using an
19 award or under a cooperative agreement under this section
20 shall be—

21 (I) $\frac{1}{3}$, in the case of a recipient that will serve small
22 business concerns located in 1 of the 18 States receiving
23 the fewest SBIR program phase I awards;

24 (II) except as provided in subparagraph (B), $\frac{1}{2}$, in the
25 case of a recipient that will serve small business concerns
26 located in 1 of the 16 States receiving the greatest num-
27 ber of SBIR program phase I awards; and

28 (III) except as provided in subparagraph (B), $\frac{3}{7}$, in
29 the case of a recipient that will serve small business con-
30 cerns located in a State not described in subclause (I)
31 or (II) that is receiving SBIR program phase I awards.

32 (ii) RANKINGS.—For purposes of clause (i), the Adminis-
33 trator shall reevaluate the ranking of a State once every 2 fis-
34 cal years, based on the most recent statistics compiled by the
35 Administrator.

36 (B) LOW-INCOME AREAS.—To the extent that the Federal con-
37 tribution to the cost of the activity will be directly allocated by a
38 recipient described in subparagraph (A) to serve small business
39 concerns located in a qualified census tract, the non-Federal share
40 of the cost of an activity carried out using an award or under a
41 cooperative agreement under this section shall be $\frac{1}{3}$.

1 (C) TYPES OF FUNDING.—

2 (i) IN GENERAL.—The non-Federal share of the cost of an
3 activity carried out by a recipient shall be comprised of not
4 less than 50 percent cash and not more than 50 percent of
5 indirect costs and in-kind contributions.

6 (ii) NON-FEDERAL SOURCE.—None of the non-Federal
7 share of costs or contributions may be derived from funds
8 from any other Federal program.

9 (3) DURATION.—An award may be made or a cooperative agreement
10 may be entered into under this section for multiple years, not to exceed
11 5 years in total.

12 (f) MENTORING NETWORKS.—

13 (1) IN GENERAL.—A recipient of an award or participant in a coop-
14 erative agreement under this section may use a reasonable amount of
15 the assistance for the establishment of a mentoring network under this
16 section.

17 (2) CRITERIA.—A mentoring network established using assistance
18 under this section shall—

19 (A) provide business advice and counseling to high technology
20 small business concerns located in the State or region served by
21 the mentoring network and identified under subsection
22 (e)(1)(E)(ii) as potential candidates for an SBIR program or
23 STTR program;

24 (B) identify volunteer mentors who—

25 (i) are persons associated with a small business concern
26 that has successfully completed 1 or more SBIR program or
27 STTR program funding agreements; and

28 (ii) have agreed to guide small business concerns through
29 all stages of the SBIR program or STTR program process,
30 including providing assistance relating to—

31 (I) proposal writing;

32 (II) marketing;

33 (III) Government accounting;

34 (IV) Government audits;

35 (V) project facilities and equipment;

36 (VI) human resources;

37 (VII) phase III partners;

38 (VIII) commercialization;

39 (IX) venture capital networking; and

40 (X) other matters relevant to the SBIR programs and
41 STTR programs;

1 (C) have experience working with small business concerns par-
2 ticipating in the SBIR programs and STTR programs;

3 (D) contribute information to the national database referred to
4 in paragraph (3); and

5 (E) agree to reimburse volunteer mentors for out-of-pocket ex-
6 penses related to service as a mentor under this section.

7 (3) MENTORING DATABASE.—The Administrator, directly or by con-
8 tract, shall—

9 (A) include in the database required by section 263301 of this
10 title, in cooperation with the SBIR program, STTR program, and
11 FAST program, information on mentoring networks and mentors
12 participating under this subsection, including a description of their
13 areas of expertise;

14 (B) work cooperatively with mentoring networks to maintain
15 and update the database; and

16 (C) take such action as is necessary to aggressively promote
17 mentoring networks under this subsection.

18 (g) TERMINATION.—The authority to carry out the FAST program termi-
19 nates on September 30, 2005.

20 **§ 263306. Innovation in energy efficiency**

21 (a) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its
22 duties under this division relating to SBIR program and STTR program so-
23 licitations by Federal agencies, the Administrator shall—

24 (1) ensure that Federal agencies give high priority to small business
25 concerns that participate in or conduct energy efficiency or renewable
26 energy system research and development projects; and

27 (2) include in the annual report to Congress under section
28 107110(a) of this title a determination of whether the priority de-
29 scribed in paragraph (1) is being carried out.

30 (b) CONSULTATION.—The Administrator shall consult with the heads of
31 other Federal agencies in determining whether priority has been given to
32 small business concerns that participate in or conduct energy efficiency or
33 renewable energy system research and development projects, as required by
34 this section.

35 (c) GUIDELINES.—The Administrator shall issue guidelines and directives
36 to assist Federal agencies in meeting the requirements of this section.

37 **§ 263307. Competitive selection procedures**

38 All funds awarded, appropriated, or otherwise made available in accord-
39 ance with section 263101 or 263201 of this title shall be awarded pursuant
40 to competitive and merit-based selection procedures.

1 **§ 263308. Award amounts in excess of guidelines**

2 (a) PROHIBITION.—

3 (1) IN GENERAL.—A Federal agency shall not issue an award under
4 the SBIR program or STTR program if the amount of the award
5 would exceed the award guidelines established under this section by
6 more than 50 percent.

7 (2) WAIVER FOR SPECIFIC TOPIC.—On the receipt of an application
8 from an SBIR agency or STTR agency, the Administrator may grant
9 a waiver from the prohibition under paragraph (1) with respect to a
10 specific topic (but not for the SBIR agency or STTR agency as a
11 whole) for a fiscal year if the Administrator determines, based on the
12 information contained in the application from the SBIR agency or
13 STTR agency, that—

14 (A) the requirement under paragraph (1) will interfere with the
15 ability of the SBIR agency or STTR agency to fulfill its research
16 mission through the SBIR program or STTR program; and

17 (B) the SBIR agency or STTR agency will minimize, to the
18 maximum extent possible, the number of awards that do not sat-
19 isfy the prohibition under paragraph (1) to preserve the nature
20 and intent of the SBIR program and the STTR program.

21 (b) MAINTENANCE OF INFORMATION.—An SBIR agency and an STTR
22 agency shall maintain information on awards exceeding the guidelines estab-
23 lished under this division, including, for each such award—

24 (1) the amount of the award;

25 (2) a justification for exceeding the guidelines for the award;

26 (3) the identity and location of the award recipient; and

27 (4) whether the award recipient has received any venture capital,
28 hedge fund, or private equity firm investment and, if so, whether the
29 recipient is majority-owned by multiple venture capital operating com-
30 panies, hedge funds, or private equity firms.

31 (c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed
32 to preclude an SBIR agency or STTR agency from supplementing an award
33 under the SBIR program or STTR program using funds of the SBIR agen-
34 cy or STTR agency that are not part of the SBIR program or STTR pro-
35 gram of the SBIR agency or STTR agency.

36 **§ 263309. Subsequent phase II awards**

37 (a) AGENCY FLEXIBILITY.—A small business concern that receives a
38 phase I award from a Federal agency under this division shall be eligible
39 to receive a subsequent phase II award from another Federal agency if—

1 (1) the head of each relevant Federal agency or the relevant compo-
2 nent of the Federal agency makes a written determination that the top-
3 ics of the relevant awards are the same; and

4 (2) both Federal agencies report the awards to the Administrator for
5 inclusion in the public database under section 263301 of this title.

6 (b) SBIR AND STTR PROGRAM FLEXIBILITY.—

7 (1) IN GENERAL.—A small business concern that receives a phase I
8 award under this division under the SBIR program or STTR program
9 may receive a subsequent phase II award under either the SBIR pro-
10 gram or the STTR program.

11 (2) REPORTING.—The participating Federal agency or agencies shall
12 report awards referred to in paragraph (1) to the Administrator for in-
13 clusion in the public database under section 263301 of this title.

14 (c) PREVENTION OF DUPLICATIVE AWARDS.—The head of a Federal
15 agency shall verify that any activity to be performed with respect to a
16 project with a phase I or phase II SBIR or STTR award has not been fund-
17 ed under the SBIR program or STTR program of another Federal agency.

18 **§ 263310. Collaboration with Federal laboratories and re-**
19 **search and development centers**

20 (a) AUTHORIZATION.—Subject to the limitations under this section, the
21 head of an SBIR participating agency or STTR participating agency may
22 make an SBIR award or STTR award to any eligible small business concern
23 that—

24 (1) intends to enter into an agreement with a Federal laboratory or
25 federally funded research and development center for a portion of the
26 activities to be performed under the award; or

27 (2) enters into a cooperative research and development agreement
28 (as defined in section 12(d) of the Stevenson-Wydler Technology Inno-
29 vation Act of 1980 (15 U.S.S. 3710a(d)) with a Federal laboratory.

30 (b) PROHIBITION.—A Federal agency shall not—

31 (1) condition an SBIR award or STTR award on a small business
32 concern's entering into an agreement with any Federal laboratory or
33 any federally funded laboratory or research and development center for
34 any portion of the activities to be performed under the award;

35 (2) approve an agreement between a small business concern receiving
36 an SBIR award or STTR award and a Federal laboratory or federally
37 funded laboratory or research and development center, if the small
38 business concern performs a lesser portion of the activities to be per-
39 formed under the award than required by this section and by the SBIR
40 policy directives and the STTR policy directive of the Administrator;
41 or

1 (3) approve an agreement that violates any provision, including any
2 data rights protections provision, of this section or the SBIR Directives
3 and the STTR policy directive.

4 (e) IMPLEMENTATION.—The SBIR policy directives and the STTR policy
5 directive issued under this division shall ensure that small business con-
6 cerns—

7 (1) have the flexibility to use the resources of the Federal labora-
8 tories or federally funded research and development centers; and

9 (2) are not required to enter into agreement with any Federal lab-
10 oratory or any federally funded laboratory or research and development
11 center as a condition of an award.

12 (d) ADVANCE PAYMENT.—If a small business concern that receives an
13 award under this division enters into an agreement with a Federal labora-
14 tory or federally funded research and development center for a portion of
15 the activities to be performed under the award, the Federal laboratory or
16 federally funded research and development center shall not require advance
17 payment from the small business concern in an amount greater than the
18 amount necessary to pay for 30 days of the activities.

19 **§ 263311. Sequential SBIR awards and STTR awards for con-**
20 **tinued work on a project**

21 A small business concern that receives a phase II SBIR award or phase
22 II STTR award for a project remains eligible to receive 1 additional phase
23 II SBIR award or phase II STTR award for continued work on the project.

24 **§ 263312. Prevention of duplicative awards**

25 The head of a Federal agency shall verify that any activity to be per-
26 formed with respect to a project with a phase I or phase II SBIR award
27 or STTR award has not been funded under the SBIR program or STTR
28 program of another Federal agency.

29 **§ 263313. Discretionary technical assistance**

30 (a) IN GENERAL.—An SBIR agency or STTR agency may enter into an
31 agreement with a vendor selected under subsection (b) to provide small busi-
32 ness concerns engaged in SBIR projects or STTR projects with technical
33 assistance services, such as access to a network of scientists and engineers
34 engaged in a wide range of technologies or access to technical and business
35 literature available through on-line data bases, for the purpose of assisting
36 the small business concerns in—

37 (1) making better technical decisions concerning the projects;

38 (2) solving technical problems that arise during the conduct of the
39 projects;

40 (3) minimizing technical risks associated with the projects; and

1 (4) developing and commercializing new commercial products and
2 processes resulting from the projects.

3 (b) **VENDOR SELECTION.**—

4 (1) **IN GENERAL.**—An SBIR agency or STTR agency may select a
5 vendor to assist small business concerns in meeting the goals listed in
6 subsection (a) for a term not to exceed 5 years.

7 (2) **COMPETITION.**—Selection of a vendor shall be competitive and
8 shall use merit-based criteria.

9 (c) **ADDITIONAL TECHNICAL ASSISTANCE.**—

10 (1) **IN GENERAL.**—An SBIR agency or STTR agency may—

11 (A) provide to a phase I or phase II SBIR award or STTR
12 award recipient, through a vendor selected under subsection (b),
13 the services described in subsection (a) in an amount equal to not
14 more than \$5,000 per year; or

15 (B) authorize a phase I or phase II SBIR award or STTR
16 award recipient to purchase the services described in subsection
17 (a) in an amount equal to not more than \$5,000 per year, which
18 shall be in addition to the amount of the recipient's award.

19 (2) **FLEXIBILITY.**—In carrying out paragraph (1), an SBIR agency
20 or STTR agency shall provide the allowable amounts to a recipient that
21 meets the eligibility requirements under the paragraph if the recipient
22 requests to seek technical assistance from an individual or entity other
23 than the vendor selected under subsection (b) by the SBIR agency or
24 STTR agency.

25 (3) **LIMITATION.**—An SBIR agency or STTR agency shall not—

26 (A) use the amounts authorized under paragraph (1) unless the
27 vendor selected under subsection (b) provides the technical assist-
28 ance to the recipient; or

29 (B) enter a contract with a vendor under subsection (b) under
30 which the amount provided for technical assistance is based on the
31 total number of phase I or phase II awards.

32 **§ 263314. Commercialization readiness programs**

33 (a) **DEPARTMENT OF DEFENSE AND MILITARY DEPARTMENTS.**—

34 (1) **IN GENERAL.**—The Secretary of Defense or Secretary of a mili-
35 tary department may create and administer a commercialization readi-
36 ness program to accelerate the transition of technologies, products, and
37 services developed under the SBIR program or STTR program of the
38 Department of Defense or of the military department to phase III, in-
39 cluding the acquisition process.

40 (2) **IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED**
41 **TRANSITION TO ACQUISITION PROCESS.**—In carrying out a commer-

1 cialization readiness program, the Secretary of Defense or Secretary of
2 a military department shall identify research programs of an SBIR
3 program or STTR program that have the potential for rapid
4 transitioning to phase III and into the acquisition process.

5 (3) LIMITATION.—A research program of a military department shall
6 not be identified under paragraph (2) unless the Secretary of the mili-
7 tary department certifies in writing that the successful transition of the
8 research program to phase III and into the acquisition process is ex-
9 pected to meet high priority military requirements of the military de-
10 partment.

11 (4) FUNDING.—

12 (A) IN GENERAL.—The Secretary of Defense or the Secretary
13 of a military department may use not more than an amount equal
14 to 1 percent of the funds available to the Department of Defense
15 or the military department pursuant to the SBIR program for
16 payment of expenses incurred to administer the commercialization
17 readiness program under this subsection.

18 (B) NO USE OF FUNDS FOR PHASE III AWARDS.—Funds de-
19 scribed in subparagraph (A) shall not be used to make phase III
20 awards.

21 (C) INAPPLICABILITY OF LIMITATIONS AFTER FISCAL YEAR
22 2015.—After fiscal year 2015, funds described in subparagraph (A)
23 shall not be subject to the limitations on the use of funds in sec-
24 tion 263101(b) of this title.

25 (5) INSERTION INCENTIVES.—For any contract with a value of not
26 less than \$100,000,000, the Secretary of Defense may—

27 (A) establish goals for the transition of phase III technologies
28 in subcontracting plans; and

29 (B) require a prime contractor on the contract to report the
30 number and dollar amount of contracts entered into by that prime
31 contractor for phase III SBIR projects or STTR projects.

32 (6) GOAL FOR SBIR AND STTR TECHNOLOGY INSERTION.—The Sec-
33 retary of Defense shall—

34 (A) set a goal to increase the number of phase II SBIR con-
35 tracts and the number of phase II STTR contracts awarded by
36 the Secretary that lead to technology transition into programs of
37 record or fielded systems;

38 (B) use incentives in effect on December 31, 2011, or create
39 new incentives, to encourage agency program managers and prime
40 contractors to meet the goal under subparagraph (A); and

41 (C) submit to the Administrator—

- 1 (i) the number and percentage of phase II SBIR and
2 STTR contracts awarded by the Secretary that led to tech-
3 nology transition into programs of record or fielded systems;
4 (ii) information on the status of each project that received
5 funding through the commercialization readiness program
6 and efforts to transition those projects into programs of
7 record or fielded systems; and
8 (iii) a description of each incentive that has been used by
9 the Secretary under subparagraph (B) and the effectiveness
10 of that incentive with respect to meeting the goal under sub-
11 paragraph (A).

12 (7) EFFECT OF SUBSECTION.—The authority to create and admin-
13 ister a commercialization readiness program under this subsection shall
14 not be construed to eliminate or replace any other part of the SBIR
15 program or STTR program that enhances the insertion or transition
16 of SBIR or STTR technologies.

17 (b) FEDERAL AGENCIES OTHER THAN THE DEPARTMENT OF DE-
18 FENSE.—

19 (1) IN GENERAL.—On approval of an application under paragraph
20 (2), the head of an SBIR participating agency or STTR participating
21 agency other than the Department of Defense may establish a pilot
22 program under which the agency head may allocate not more than 10
23 percent of the funds allocated to the SBIR program or STTR program
24 of the SBIR participating agency or STTR participating agency—

25 (A) for awards for technology development, testing, evaluation,
26 and commercialization assistance for SBIR or STTR phase II
27 technologies; or

28 (B) to support the progress of research, research and develop-
29 ment, and commercialization conducted under the SBIR program
30 or STTR program to phase III.

31 (2) APPLICATION.—

32 (A) SUBMISSION.—The head of an SBIR participating agency
33 or STTR participating agency may establish a pilot program
34 under paragraph (1) if the agency head, not later than 90 days
35 before the 1st day of the fiscal year in which the pilot program
36 is to be established, submits to the Administrator a written appli-
37 cation that describes a compelling reason, including unusually high
38 regulatory, systems integration, or other costs relating to develop-
39 ment or manufacturing of identifiable, highly promising small
40 business technologies or a class of small business technologies ex-
41 pected to substantially advance the mission of the Federal agency,

1 why additional investment in SBIR or STTR technologies is nec-
2 essary.

3 (B) DETERMINATION.—The Administrator shall—

4 (i) make a determination whether to approve an application
5 under subparagraph (A) not later than 30 days before the
6 first day of the fiscal year for which the application is submit-
7 ted;

8 (ii) publish the determination in the Federal Register; and

9 (iii) make a copy of the determination and any related ma-
10 terials available to the Committee on Small Business and En-
11 trepreneurship of the Senate and the Committee on Small
12 Business and Committee on Science, Space, and Technology
13 of the House of Representatives.

14 (3) CONSIDERATION OF LIKELIHOOD OF DOMESTIC MANUFAC-
15 TURE.—In making an award under this subsection, an agency head
16 shall consider whether the technology to be supported by the award is
17 likely to be manufactured in the United States.

18 (4) MAXIMUM AMOUNT OF AWARD.—An agency head shall not make
19 an award under the pilot program under paragraph (1) in excess of the
20 amount that is equal to 3 times the dollar amounts generally estab-
21 lished for phase II awards under subsection section 263104(b)(10) or
22 263203(e)(2)(I) of this title.

23 (5) REGISTRATION.—The recipient an award under a pilot program
24 under paragraph (1) shall register with the Administrator in a registry
25 that is available to the public.

26 (6) REPORT.—The head of a Federal agency that carries out a pilot
27 program under paragraph (1) shall include in the annual report of the
28 Federal agency to the Administrator—

29 (A) an analysis of the various activities considered for inclusion
30 in the pilot program; and

31 (B) a statement of the reasons why each activity considered was
32 included or not included, as the case may be.

33 (7) TERMINATION OF AUTHORITY.—The authority to establish a
34 pilot program under this subsection expires at the end of fiscal year
35 2017.

36 **§ 263315. Timing of release of funding**

37 An SBIR participating agency or STTR participating agency shall, to the
38 extent possible, attempt to shorten the amount of time between the provi-
39 sion of notice of an award under the SBIR program or STTR program and
40 the subsequent release of funding under the award.

1 **§ 263316. Reporting on timing of final decisions on propos-**
2 **als and releases of funding**

3 An SBIR participating agency or STTR participating agency shall pro-
4 vide the Administrator—

5 (1) the average length of time that the SBIR participating agency
6 or STTR participating agency takes to make a final decision on propos-
7 als submitted under the SBIR program or STTR program;

8 (2) the average length of time that the SBIR participating agency
9 or STTR participating agency takes to release funding under an award
10 under the SBIR program or STTR program; and

11 (3) the goals established to reduce those lengths of time.

12 **§ 263317. Release of contact information to economic devel-**
13 **opment organizations**

14 (a) CONSENT OF SMALL BUSINESS CONCERN.—An SBIR agency or
15 STTR agency shall provide a means by which a small business concern that
16 is an SBIR applicant or an STTR applicant may indicate to the SBIR
17 agency or STTR agency whether the SBIR agency or STTR agency has the
18 consent of the small business concern to—

19 (1) identify the small business concern to appropriate local and State
20 economic development organizations as an SBIR applicant or an STTR
21 applicant; and

22 (2) release the contact information of the small business concern to
23 the economic development organizations.

24 (b) RULES.—The Administrator shall issue rules to implement this sec-
25 tion. The rules shall include a requirement that an SBIR agency or STTR
26 agency include in the SBIR or STTR application a provision under which
27 an applicant may indicate consent for purposes of subsection (a).

28 **§ 263318. Prevention of fraud, waste, and abuse**

29 (a) IN GENERAL.—The SBIR policy directives under section 263104 of
30 this title and the STTR policy directive under section 263203 of this title
31 shall include measures to prevent fraud, waste, and abuse in the SBIR pro-
32 gram and STTR program.

33 (b) CONTENTS.—The measures required under subsection (a) include—

34 (1) definitions or descriptions of fraud, waste, and abuse;

35 (2) guidelines for the monitoring and oversight of applicants to and
36 recipients of awards under the SBIR program or STTR program;

37 (3) a requirement that an SBIR participating agency or STTR par-
38 ticipating agency include information concerning the method estab-
39 lished by the Inspector General of the SBIR participating agency or
40 STTR participating agency to report fraud, waste, and abuse (includ-
41 ing any telephone hotline or web-based platform)—

1 (A) on the website of the SBIR participating agency or STTR
2 participating agency; and

3 (B) in any solicitation or notice of funding opportunity issued
4 by the SBIR participating agency or STTR participating agency
5 for the SBIR program or STTR program; and

6 (4) a requirement that an applicant for and a small business concern
7 that receives funding under the SBIR program or STTR program shall
8 certify whether the applicant or small business concern is in compliance
9 with the laws relating to the SBIR program and the STTR program
10 and the conduct guidelines established under the SBIR policy directives
11 and the STTR policy directive.

12 (c) PROCEDURES AND REQUIREMENTS FOR CERTIFICATION.—

13 (1) IN GENERAL.—In consultation with the Council of Inspectors
14 General on Integrity and Efficiency, and after providing notice and an
15 opportunity for public comment, the Administrator shall develop proce-
16 dures and requirements for a certification under subsection (b)(4).

17 (2) CONTENTS.—The form of certification developed under para-
18 graph (1) may—

19 (A) cover the lifecycle of an award to require certifications at
20 the application, funding, reporting, and closeout phases of every
21 SBIR award and STTR award;

22 (B) require the small business concern to certify compliance
23 with the principal investor primary employment requirement, the
24 small business concern definition requirement, and the perform-
25 ance of work requirements as set forth in the directive applicable
26 to the award;

27 (C) require a small business concern to disclose whether the
28 small business concern has applied for, has plans to apply for, or
29 has received an SBIR award or STTR award for identical or es-
30 sentially equivalent work (as defined under the SBIR policy direc-
31 tives and the STTR policy directive), and require the small busi-
32 ness concern to certify that the award that the small business con-
33 cern is applying for or obtaining funding for is not identical or es-
34 sentially equivalent to work that the small business concern has
35 performed, or will perform, in connection with any other SBIR
36 award or STTR award that the small business concern has applied
37 for or has received from any other agency except as fully disclosed
38 to all funding agencies; and

39 (D) require that the small business concern certify that the
40 small business concern will perform or did perform the work on

1 the award at its facilities with its employees, unless otherwise indi-
2 cated.

3 (d) INSPECTORS GENERAL.—The Inspector General of a participating
4 SBIR agency or participating SBIR agency shall cooperate to prevent fraud,
5 waste, and abuse in the SBIR program and STTR program by—

6 (1) establishing fraud detection indicators;

7 (2) reviewing regulations and operating procedures of the participat-
8 ing SBIR agency or participating SBIR agency;

9 (3) coordinating information sharing between Federal agencies, to
10 the extent otherwise permitted under Federal law; and

11 (4) improving the education and training of and outreach to—

12 (A) administrators of the SBIR program and the STTR pro-
13 gram of the participating SBIR agency or participating SBIR
14 agency;

15 (B) applicants to the SBIR program or STTR program; and

16 (C) recipients of awards under the SBIR program or STTR
17 program.

18 **§ 263319. Competitive selection procedures**

19 All funds awarded, appropriated, or otherwise made available in accord-
20 ance with section 263101 or 263201 of this title shall be awarded pursuant
21 to competitive and merit-based selection procedures.

22 **§ 263320. Limitation on pilot programs**

23 (a) DEFINITION OF COVERED PILOT PROGRAM.—In this section, the
24 term “covered pilot program” means an initiative, project, innovation, or
25 other activity that—

26 (1) is established by the Administrator;

27 (2) relates to an SBIR program or STTR program; and

28 (3) is not specifically authorized by law.

29 (b) PILOT PROGRAMS IN OPERATION ON DECEMBER 31, 2011.—The Ad-
30 ministrator may carry out a covered pilot program that is in operation on
31 December 31, 2011, only until December 31, 2014.

32 (c) PILOT PROGRAMS ESTABLISHED AFTER DECEMBER 31, 2011.—The
33 Administrator may carry out a covered pilot program established after De-
34 cember 31, 2011—

35 (1) only for a period of 3 years period beginning on the date on
36 which the covered pilot program is established; and

37 (2) if the covered pilot program does not continue and is not based
38 on, in any manner, a previously established covered pilot program.

39 **§ 263321. Minimum standards for participation**

40 (a) PROGRESS TO PHASE II SUCCESS.—

1 (1) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION
2 RATE.—The head of an SBIR participating agency or STTR partici-
3 pating agency shall—

4 (A) establish a system to measure, where appropriate, the suc-
5 cess of small business concerns with respect to the receipt of phase
6 II SBIR awards or STTR awards for projects that have received
7 phase I SBIR awards or STTR awards;

8 (B) establish a minimum performance standard for small busi-
9 ness concerns with respect to the receipt of phase II SBIR awards
10 or STTR awards for projects that have received phase I SBIR
11 awards or STTR awards; and

12 (C) begin evaluating, each fiscal year, whether each small busi-
13 ness concern that received a phase I SBIR award or STTR award
14 from the SBIR participating agency or STTR participating agency
15 meets the minimum performance standard established under sub-
16 paragraph (B).

17 (2) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZA-
18 TION RATE.—If the head of an SBIR participating agency or STTR
19 participating agency determines that a small business concern that re-
20 ceived a phase I SBIR award or STTR award from the SBIR partici-
21 pating agency or STTR participating agency is not meeting the mini-
22 mum performance standard established under paragraph (1)(B), the
23 small business concern shall not participate in phase I (or phase II if
24 under the authority of section 263108 of this title) of the SBIR pro-
25 gram or STTR program of the SBIR participating agency or STTR
26 participating agency during the 1-year period beginning on the date on
27 which the determination is made.

28 (b) PROGRESS TO PHASE III SUCCESS.—

29 (1) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION
30 RATE.—Not later than December 31, 2013, the head of an SBIR par-
31 ticipating agency or STTR participating agency shall—

32 (A) establish a system to measure, where appropriate, the suc-
33 cess of small business concerns with respect to the receipt of phase
34 III SBIR awards or STTR awards for projects that have received
35 phase I SBIR awards or STTR awards;

36 (B) establish a minimum performance standard for small busi-
37 ness concerns with respect to the receipt of phase III SBIR
38 awards or STTR awards for projects that have received phase I
39 SBIR awards or STTR awards; and

40 (C) begin evaluating, each fiscal year, whether each small busi-
41 ness concern that received a phase I SBIR award or STTR award

1 from SBIR participating agency or STTR participating agency
2 meets the minimum performance standard established under sub-
3 paragraph (B).

4 (2) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZA-
5 TION RATE.—If the head of an SBIR participating agency or STTR
6 participating agency determines that a small business concern that re-
7 ceived a phase I SBIR award or STTR award from the SBIR partici-
8 pating agency or STTR participating agency is not meeting the mini-
9 mum performance standard established under paragraph (1)(B), the
10 small business concern shall not participate in phase I (or phase II if
11 under the authority of section 263108 of this title) of the SBIR pro-
12 gram or STTR program of the SBIR participating agency or STTR
13 participating agency during the 1-year period beginning on the date on
14 which the determination is made.

15 (c) SBA OVERSIGHT.—

16 (1) APPROVAL AND PUBLICATION OF SYSTEMS AND MINIMUM PER-
17 FORMANCE STANDARDS.—A system and minimum performance stand-
18 ard established under subsection (a) or (b) shall be submitted to the
19 Administrator by the head of an SBIR participating agency or STTR
20 participating agency and shall be subject to the approval of the Admin-
21 istrator. In making a determination with respect to approval, the Ad-
22 ministrator shall ensure that the minimum performance standard ex-
23 ceeds a de minimis level. The Administrator shall publish on the SBA
24 website the systems and minimum performance standards approved.

25 (2) SUBMISSION OF EVALUATION RESULTS BY AGENCY.—The head
26 of an SBIR participating agency or STTR participating agency shall
27 submit to the Administrator the results of each evaluation conducted
28 under subsection (a) or (b).

29 (d) NOTICE AND COMMENT.—At least 60 days before becoming effective,
30 a system and minimum performance standard established under subsection
31 (a) or (b) and an approval provided by the Administrator under subsection
32 (c)(1) shall be preceded by the provision of notice of and an opportunity
33 for public comment on the system, standard, or approval.

34 **§ 263322. Publication of information relating to notice of**
35 **and application for SBIR awards and STTR**
36 **awards**

37 To increase the number of small business concerns that receive awards
38 under the SBIR or STTR programs of SBIR participating agencies and
39 STTR participating agencies, and to simplify the application process for
40 SBIR awards and STTR awards, the Administrator shall maintain a web-
41 site on which the Administrator shall publish such information relating to

1 notice of and application for awards under the SBIR program and STTR
 2 program of each SBIR participating agency and STTR participating agency
 3 as the Administrator determines to be appropriate.

4 **Division J—Small Business Development**
 5 **Center Program**
 6 **Chapter 271—Small Business Development**
 7 **Center Program**

Sec.

- 271101. Definitions.
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8 **§ 271101. Definitions**

9 In this chapter:

- 10 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-
 11 trator” means the Associate Administrator for Small Business Develop-
 12 ment Centers.
- 13 (2) FINANCIAL ASSISTANCE.—The term “financial assistance” means
 14 financial assistance under a grant, contract, or cooperative agreement.
- 15 (3) FINANCIAL ASSISTANCE AGREEMENT.—The term “financial as-
 16 sistance agreement” means a grant agreement, contract, or cooperative
 17 agreement under which financial assistance is provided under this
 18 chapter.
- 19 (4) PROGRAM.—The term “program” means the small business de-
 20 velopment center program under this chapter.
- 21 (5) QUALIFIED ENTITY.—The term “qualified entity” means—
 22 (A) a public or private institution of higher education (including
 23 a land-grant college or university, a college or school of business,
 24 engineering, commerce, or agriculture, and a community college or
 25 junior college);
 26 (B) a women’s business center; and
 27 (C) any other entity if the entity, on December 31, 1990, was
 28 receiving a grant or was a party to a contract or cooperative
 29 agreement under this chapter.
- 30 (6) STATE.—The term “State” means a State, the District of Co-
 31 lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

1 **§ 271102. Financial assistance agreements**

2 (a) IN GENERAL.—Under a program to be known as the small business
3 development center program, the Administrator may provide financial as-
4 sistance to a qualified entity to assist in establishing a small business devel-
5 opment center project for the purpose of providing—

6 (1) a small business oriented employment or natural resources devel-
7 opment program;

8 (2) studies, research, and counseling concerning the managing, fi-
9 nancing, and operation of small business concerns;

10 (3) management and technical assistance regarding participation by
11 small business concerns in international markets, export promotion,
12 and technology transfer;

13 (4) delivery or distribution of services and information in connection
14 with an activity described in paragraph (1), (2), or (3); and

15 (5) providing access to business analysts that can refer small busi-
16 ness concerns to available experts.

17 (b) REQUIREMENTS.—The Administrator shall require an applicant for fi-
18 nancial assistance under this chapter with performance commencing on or
19 after January 1, 1992, to—

20 (1) have its own budget; and

21 (2) primarily use institutions of higher education and women’s busi-
22 ness centers to provide services to the small business community.

23 (c) TERM.—The term of a financial assistance agreement shall be made
24 on a calendar year or Federal fiscal year basis.

25 (d) COOPERATION TO PROVIDE INTERNATIONAL TRADING SERVICES.—

26 (1) INFORMATION AND SERVICES.—A small business development
27 center shall work in close cooperation with SBA regional offices and
28 SBA district offices, the Department of Commerce, appropriate Fed-
29 eral, State, and local agencies (including State trade agencies), and the
30 small business community to serve as an active information dissemina-
31 tion and service delivery mechanism for existing trade promotion, trade
32 finance, trade adjustment, trade remedy, and trade data collection pro-
33 grams of particular utility for small business concerns.

34 (2) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT AS-
35 SISTANCE CENTERS.—A small business development center that coun-
36 sels a small business concern on issues relating to international trade
37 shall—

38 (A) consult with State trade agencies and export assistance cen-
39 ters to provide appropriate services to the small business concern;
40 and

1 (B) as necessary, refer the small business concern to a State
2 trade agency or export assistance center for further counseling or
3 assistance.

4 (e) MANAGEMENT.—

5 (1) IN GENERAL.—The program shall be under the general manage-
6 ment and oversight of the Administrator for the delivery of programs
7 and services to the small business community.

8 (2) PROGRAMS AND SERVICES.—Programs and services referred to
9 in paragraph (1) shall be jointly developed, negotiated, and agreed on,
10 with full participation of a qualified entity and the Administrator,
11 under an executed financial assistance agreement between the qualified
12 entity and the Administrator.

13 (f) ASSOCIATION OF SMALL BUSINESS DEVELOPMENT CENTERS.—

14 (1) IN GENERAL.—Small business development centers may form an
15 Association to pursue matters of common concern.

16 (2) RECOGNITION; DOCUMENTS.—

17 (A) IN GENERAL.—If more than a majority of the small busi-
18 ness development centers that are operating under agreements
19 with the Administrator are members of an Association formed
20 under paragraph (1), the Administrator shall—

21 (i) recognize the existence and activities of the Association;
22 and

23 (ii) consult with the Association and develop documents—

24 (I) announcing the annual scope of activities under
25 this chapter;

26 (II) requesting proposals to deliver assistance as pro-
27 vided in this chapter; and

28 (III) governing the general operations and administra-
29 tion of the program, specifically including the develop-
30 ment of regulations and a uniform negotiated financial
31 assistance agreement for use on an annual basis when
32 entering into individual negotiated financial assistance
33 agreements with small business development centers.

34 (B) INCORPORATION OF CERTAIN PROVISIONS.—In regulations
35 under subparagraph (A)(ii)(III), provisions governing audits, cost
36 principles and administrative requirements for financial assistance
37 that are included in uniform requirements of Office of Manage-
38 ment and Budget Circulars shall be incorporated by reference and
39 shall not be set forth in summary or other form.

40 (3) LEVERAGING OF RESOURCES.—On an annual basis, a small busi-
41 ness development center shall review and coordinate public and private

1 partnerships and cosponsorships with the Administrator for the pur-
2 pose of more efficiently leveraging available resources on a national and
3 a State basis.

4 (g) FUNDING.—

5 (1) MATCHING AMOUNT.—

6 (A) IN GENERAL.—The Administrator shall require as a condi-
7 tion of any financial assistance agreement (or amendment or
8 modification of a financial assistance agreement) made to a quali-
9 fied entity under this chapter that a matching amount (excluding
10 any fees collected from recipients of such assistance) equal to the
11 amount of the financial assistance be provided from sources other
12 than the Federal Government, to be comprised of not less than 50
13 percent cash and not more than 50 percent of indirect costs and
14 in-kind contributions.

15 (B) RESTRICTION.—The matching amount described in sub-
16 paragraph (A) shall not include any indirect costs or in-kind con-
17 tributions derived from any Federal program.

18 (2) FUNDING FORMULA.—

19 (A) IN GENERAL.—Subject to subparagraph (C), the total
20 amount of financial assistance received by recipients of financial
21 assistance in a State under this section shall be equal to an
22 amount determined in accordance with the following formula:

23 (i) PRO RATA BASIS.—The annual amount made available
24 under section 109103(a) of this title for the small business
25 development center program, less any reductions made for ex-
26 penses authorized by subparagraph (E), shall be divided on
27 a pro rata basis, based on the percentage of the population
28 of each State, as compared with the population of the United
29 States.

30 (ii) MINIMUM FUNDING LEVEL.—If the pro rata amount
31 calculated under clause (i) for any State is less than the mini-
32 mum funding level under subparagraph (C), the Adminis-
33 trator shall determine the aggregate amount necessary to
34 achieve that minimum funding level for each such State.

35 (iii) DEDUCTION.—The aggregate amount calculated under
36 clause (ii) shall be deducted from the amount calculated
37 under clause (i) for States eligible to receive more than the
38 minimum funding level. The deductions shall be made on a
39 pro rata basis, based on the population of each such State,
40 as compared with the total population of all such States.

1 (iv) ADDITION.—The aggregate amount deducted under
2 clause (iii) shall be added to the amount of financial assist-
3 ance of the States that are not eligible to receive more than
4 the minimum funding level in order to achieve the minimum
5 funding level for each such State, except that the eligible
6 amount of financial assistance to any State shall not be re-
7 duced to an amount below the minimum funding level.

8 (B) DETERMINATION OF AMOUNT OF FINANCIAL ASSISTANCE.—
9 The amount of financial assistance for which a State is eligible to
10 apply under this paragraph shall be the amount determined under
11 subparagraph (A), subject to any modifications required under
12 subparagraph (C), and shall be based on the amount available for
13 the fiscal year in which performance of the financial assistance
14 agreement commences, but not including amounts distributed in
15 accordance with subparagraph (D). The total amount of financial
16 assistance received by recipients of financial assistance in a State
17 under any provision of this paragraph shall not exceed the amount
18 of matching funds from sources other than the Federal Govern-
19 ment, as required under paragraph (1).

20 (C) MINIMUM FUNDING LEVEL.—The amount of the minimum
21 funding level for each State shall be determined for each fiscal
22 year based on the amount made available for that fiscal year to
23 carry out this chapter, as follows:

24 (i) NOT LESS THAN \$81,500,000 AND NOT MORE THAN
25 \$90,000,000 MADE AVAILABLE.—If the amount made available
26 is not less than \$81,500,000 and not more than \$90,000,000,
27 the minimum funding level shall be \$500,000.

28 (ii) LESS THAN \$81,500,000 MADE AVAILABLE.—If the
29 amount made available is less than \$81,500,000, the mini-
30 mum funding level shall be the remainder of \$500,000 minus
31 a percentage of \$500,000 equal to the percentage amount by
32 which the amount made available is less than \$81,500,000.

33 (iii) MORE THAN \$90,000,000 MADE AVAILABLE.—If the
34 amount made available is more than \$90,000,000, the mini-
35 mum funding level shall be the sum of \$500,000 plus a per-
36 centage of \$500,000 equal to the percentage amount by which
37 the amount made available exceeds \$90,000,000.

38 (D) DISTRIBUTIONS.—Subject to subparagraph (C), if qualified
39 entities in any State do not apply for, or use the full funding eligi-
40 bility for the State for a fiscal year, the Administrator shall dis-
41 tribute the remaining funds as follows:

1 (i) AMOUNT LESS THAN THE AMOUNT RECEIVED IN FISCAL
2 YEAR 2000.—If the amount of financial assistance to any
3 State is less than the amount received by recipients of finan-
4 cial assistance in that State in fiscal year 2000, the Adminis-
5 trator shall distribute the remaining funds, on a pro rata
6 basis, based on the percentage of shortage of each such State,
7 as compared with the total amount of such remaining funds
8 available, to the extent necessary to increase the amount of
9 the financial assistance to the amount received by recipients
10 of financial assistance in that State in fiscal year 2000, or
11 until such funds are exhausted, whichever occurs first.

12 (ii) REMAINING AMOUNT.—If any funds remain after appli-
13 cation of clause (i), the remaining amount may be distributed
14 as supplemental financial assistance to applicants in any
15 State, as the Administrator determines, in the discretion of
16 the Administrator, to be appropriate, after consultation with
17 the Association.

18 (E) USE OF AMOUNTS.—

19 (i) IN GENERAL.—Of the amounts made available in any
20 fiscal year to carry out this chapter—

21 (I) not more than \$500,000 may be used by the Ad-
22 ministrators to pay expenses described in paragraphs (2)
23 to (4) of section 109103(a) of this title; and

24 (II) not more than \$500,000 may be used by the Ad-
25 ministrators to pay the examination expenses described in
26 section 109103(a)(5) of this title.

27 (ii) LIMITATION.—No funds described in clause (i) may be
28 used for examination expenses under section 109103(a)(5) of
29 this title if the use would reduce the amount of financial as-
30 sistance made available under subparagraph (A)(i) to less
31 than \$85,000,000 (after excluding any amounts provided in
32 appropriations Acts, or accompanying report language, for
33 specific institutions or for purposes other than the general
34 program) or would further reduce the amount of such finan-
35 cial assistance below that amount.

36 (F) EXCLUSIONS.—Financial assistance provided to grant re-
37 cipients in a State by the Administrator or another Federal agency
38 to carry out subsection (j) or section 271104(b)(7) of this title,
39 or for supplemental financial assistance under subparagraph
40 (D)(ii) of this paragraph, shall not be included in the calculation

1 of maximum funding for a State under subparagraph (B) of this
2 paragraph.

3 (h) PORTABLE ASSISTANCE FOR STARTUP AND SUSTAINABILITY NON-
4 MATCHING FINANCIAL ASSISTANCE PROGRAMS.—

5 (1) IN GENERAL.—From the funds appropriated under section
6 109103(h) of this title, the Administrator shall reserve not less than
7 \$1,000,000 for each fiscal year to develop portable assistance for start-
8 up and sustainability non-matching financial assistance programs to be
9 conducted by eligible small business development centers in commu-
10 nities that are economically challenged as a result of a business or gov-
11 ernment facility downsizing or closing that has resulted in the loss of
12 jobs or small business instability.

13 (2) MAXIMUM AMOUNT.—Non-matching financial assistance under
14 this subsection shall not exceed \$100,000.

15 (3) USE.—Non-matching financial assistance under this subsection
16 shall be used for small business development center personnel expenses
17 and related small business programs and services.

18 (i) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CEN-
19 TERS.—

20 (1) IN GENERAL.—Subject to paragraph (2), a small business devel-
21 opment center may enter into a contract with a Federal agency to pro-
22 vide specific assistance to small business concerns.

23 (2) CONTRACT PREREQUISITES.—

24 (A) IN GENERAL.—Before bidding on a contract under para-
25 graph (1), a small business development center shall receive ap-
26 proval from the Associate Administrator of the subject and general
27 scope of the contract.

28 (B) APPROVAL.—Approval of a contract under paragraph (1)
29 shall be based on a determination that—

30 (i) the contract will provide assistance to small business
31 concerns; and

32 (ii) performance of the contract will not hinder the small
33 business development center in carrying out the terms of the
34 financial assistance agreement received by the small business
35 development center from the Administrator.

36 (3) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under
37 this subsection shall not be subject to the matching funds or eligibility
38 requirements of subsection (g).

39 (4) INAPPLICABILITY TO CERTAIN CONTRACTING GOALS.—Notwith-
40 standing any other provision of law, a contract for assistance under
41 this subsection shall not be applied to a Federal agency's contracting

1 goal under section 251106 of this title for small business concerns
2 owned and controlled by socially and economically disadvantaged indi-
3 viduals, small business concerns owned and controlled by women, or
4 other small business concerns.

5 (j) ADDITIONAL FINANCIAL ASSISTANCE.—

6 (1) IN GENERAL.—A qualified entity that is funded by the Adminis-
7 trator as a small business development center may apply to the Admin-
8 istrator for additional financial assistance to be used solely to assist,
9 as provided in paragraphs (2) to (7) of section 271104(b), in—

10 (A) the development and enhancement of exports by small busi-
11 ness concerns;

12 (B) technology transfer; and

13 (C) outreach, development, and enhancement of minority-owned
14 small business startups or expansions, HUBZone small business
15 concerns, veteran-owned small business startups or expansions,
16 and women-owned small business startups or expansions, in com-
17 munities affected by base closings or military or corporate down-
18 sizing or in rural or underserved communities.

19 (2) COMPLIANCE REQUIREMENT.—An applicant applying for addi-
20 tional financial assistance under paragraph (1) shall comply with all of
21 the provisions of this chapter, including providing matching funds.

22 (3) FUNDING.—Funding under this subsection shall be effective for
23 any fiscal year to the extent provided in advance in appropriations
24 Acts.

25 (4) LIMITATION ON AMOUNT OF GRANT.—No recipient of funds
26 under this subsection shall receive financial assistance that would ex-
27 ceed its pro rata share of a \$15,000,000 program based on the popu-
28 lations to be served by the small business development center as com-
29 pared with the total population of the United States.

30 (5) MINIMUM STATE ELIGIBILITY AMOUNT.—The minimum amount
31 of eligibility for recipients of financial assistance in any State shall be
32 \$100,000.

33 (6) FINANCIAL ASSISTANCE TO NONPROFIT ENTITIES.—

34 (A) IN GENERAL.—In a State described in subparagraph (B),
35 the Administrator may provide financial assistance to a nonprofit
36 entity in the State to carry out the activities specified in this sub-
37 section.

38 (B) STATES.—A State referred to in subparagraph (A) is a
39 State in which—

40 (i) the Administrator has not provided financial assistance
41 under subsection (a); or

1 (ii) no application for financial assistance has been made
2 by a small business development center under this subsection
3 within 60 days after the later of—

4 (I) the effective date of a financial assistance agree-
5 ment under subsection (a) to the small business develop-
6 ment center; or

7 (II) the date on which the Administrator notifies the
8 financial assistance recipient funded under subsection (a)
9 that funds are available for applications for financial as-
10 sistance under this subsection.

11 (C) MATCHING FUNDS.—A nonprofit entity that receives finan-
12 cial assistance under this paragraph shall comply with the match-
13 ing funds requirement of subsection (g).

14 (D) APPROPRIATIONS.—Financial assistance under this para-
15 graph shall be effective for any fiscal year only to the extent pro-
16 vided in advance in an appropriations Act.

17 (E) PRO RATA SHARE.—The amount of financial assistance pro-
18 vided under this paragraph in a State shall be limited to the pro
19 rata share provisions of paragraph (4).

20 (k) PRIVACY REQUIREMENTS.—

21 (1) IN GENERAL.—A small business development center, consortium
22 of small business development centers, or contractor or agent of a small
23 business development center may not disclose the name, address, or
24 telephone number of any individual or small business concern receiving
25 assistance under this chapter without the consent of the individual or
26 small business concern unless—

27 (A) the Administrator is ordered to make such a disclosure by
28 a court in any civil or criminal enforcement action initiated by a
29 Federal agency or State agency; or

30 (B) the Administrator considers such a disclosure to be nec-
31 essary for the purpose of conducting a financial audit of a small
32 business development center.

33 (2) LIMITATION.—A disclosure under this paragraph (1)(B) shall be
34 limited to the information necessary for an audit.

35 (3) USE OF INFORMATION BY THE ADMINISTRATOR.—This chapter
36 does not—

37 (A) restrict access by the Administrator to program activity
38 data; or

39 (B) preclude the Administrator from using client information to
40 conduct client surveys.

41 (4) REGULATIONS.—

1 (A) IN GENERAL.—The Administrator shall issue regulations to
2 establish standards—

3 (i) for disclosures with respect to financial audits under
4 paragraph (1)(B); and

5 (ii) for client surveys under paragraph (3)(B), including
6 standards for oversight of such surveys and for dissemination
7 and use of client information.

8 (B) MAXIMUM PRIVACY PROTECTION.—Regulations under this
9 paragraph, shall, to the extent practicable, provide for the maxi-
10 mum amount of privacy protection.

11 (C) INSPECTOR GENERAL.—Until the effective date of regula-
12 tions under this paragraph, any client survey and the use of such
13 information shall be approved by the Inspector General of SBA,
14 who shall include such approval in a semiannual report.

15 **§ 271103. Plans**

16 (a) PROVISION OF FINANCIAL ASSISTANCE CONSISTENT WITH AREA
17 PLAN.—Financial assistance shall not be made available to a qualified en-
18 tity if approving the assistance would be inconsistent with a plan for the
19 area of a State in which service is to be provided that has been adopted
20 by an agency recognized by the State as authorized to adopt an area plan
21 and approved by the Administrator in accordance with standards and re-
22 quirements established under this chapter.

23 (b) PLAN.—

24 (1) IN GENERAL.—A qualified entity may apply to participate in the
25 small business development center program by submitting to the Ad-
26 ministrator for approval a plan that—

27 (A) identifies the entities authorized under this chapter to partici-
28 pate in the small business development center program;

29 (B) identifies the geographic area to be served;

30 (C) describes the services that the applicant would provide and
31 the method for delivering the services;

32 (D) includes a budget; and

33 (E) includes any other information and assurances that the Ad-
34 ministrator may require to ensure that the qualified entity will
35 carry out the activities eligible for assistance.

36 (2) ACTION BY THE ADMINISTRATOR.—

37 (A) IN GENERAL.—The Administrator may approve, condi-
38 tionally approve, or reject a qualified entity plan or combination
39 of plans submitted.

40 (B) REVIEW.—In all cases, the Administrator shall review a
41 qualified entity plan—

1 (i) for conformity with an area plan approved under sub-
2 section (a); and

3 (ii) with a view toward providing small business concerns
4 with the most comprehensive and coordinated assistance in
5 the State or part of a State to be served.

6 (c) ASSISTANCE OUTSIDE THE STATE.—The Administrator may permit
7 a small business development center to provide advice, information, and as-
8 sistance, as described in section 271104 of this title, to small business con-
9 cerns located outside the State in which the small business development cen-
10 ter is located, but only to the extent that the small business concerns are
11 located within close geographical proximity to the small business develop-
12 ment center, as determined by the Administrator.

13 **§271104. Services**

14 (a) IN GENERAL.—A small business development center shall assist small
15 business concerns in solving problems concerning operations, manufacturing,
16 engineering, technology exchange and development, personnel administra-
17 tion, marketing, sales, merchandising, finance, accounting, business strategy
18 development, and other disciplines required for small business growth and
19 expansion, innovation, increased productivity, and management improve-
20 ment, and for decreasing industry economic concentrations.

21 (b) SERVICES TO BE PROVIDED.—Services provided by a small business
22 development center shall include—

23 (1) furnishing one-to-one individual counseling to small business con-
24 cerns, including—

25 (A) working with individuals to increase awareness of basic
26 credit practices and credit requirements;

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

29 (C) working with the Administrator to develop and provide in-
30 formational tools for use in working with individuals on pre-busi-
31 ness startup planning, existing business expansion, and export
32 planning; and

33 (D) working with individuals referred by the local SBA offices
34 and participating lenders;

35 (2) assisting in technology transfer, research and development (in-
36 cluding applied research), and coupling from existing sources to small
37 business concerns, including—

38 (A) working to increase the access of small business concerns
39 to the capabilities of automated flexible manufacturing systems;

40 (B) working through existing networks and developing new net-
41 works for technology transfer that encourage partnership between

1 the small business and academic communities to help commer-
2 cialize university-based research and development and introduce
3 university-based engineers and scientists to their counterparts in
4 small technology-based firms; and

5 (C) exploring the viability of developing shared production facili-
6 ties, under appropriate circumstances;

7 (3)(A) in cooperation with the Department of Commerce and other
8 relevant Federal agencies, actively assisting small business concerns in
9 exporting by—

10 (i) identifying and developing potential export markets for small
11 business concerns;

12 (ii) facilitating export transactions for small business concerns;

13 (iii) developing linkages between small business concerns and
14 prescreened foreign buyers;

15 (iv) assisting small business concerns in participating in inter-
16 national trade shows;

17 (v) assisting small business concerns in obtaining export financ-
18 ing; and

19 (vi) facilitating the development or reorientation of marketing
20 and production strategies; and

21 (B) where appropriate, working with the Administrator in coopera-
22 tion with the State to establish a State international trade center for
23 the purposes described in subparagraph (A);

24 (4)(A) developing a program in conjunction with the Export-Import
25 Bank of the United States and local and regional SBA offices that will
26 enable the small business development center to serve as an informa-
27 tion network and to assist small business concern applicants for financ-
28 ing programs of the Export-Import Bank of the United States; and

29 (B) otherwise identifying and helping to make available export fi-
30 nancing programs to small business concerns;

31 (5) working closely with the small business community, small busi-
32 ness consultants, State agencies, universities, and other appropriate
33 groups to make translation services more readily available to small
34 business concerns doing business, or attempting to develop business, in
35 foreign markets;

36 (6) cooperating with the Department of Commerce and other rel-
37 evant Federal agencies to increase access to available export market in-
38 formation systems, including the Commercial Information Management
39 System;

40 (7) assisting small business concerns in developing and implementing
41 strategic business plans to timely and effectively respond to the

1 planned closure (or reduction) of a Department of Defense facility
2 within the community, or actual or projected reductions in small busi-
3 ness concerns' business base due to the actual or projected termination
4 (or reduction) of a Department of Defense program or a contract in
5 support of a Department of Defense program by—

6 (A) developing broad economic assessments of the adverse im-
7 pacts of—

8 (i) the closure (or reduction) of the Department of Defense
9 facility on the small business concerns providing goods or
10 services to the facility or to the military and civilian personnel
11 stationed or working at the facility; and

12 (ii) the termination (or reduction) of a Department of De-
13 fense program (or contracts under a Department of Defense
14 program) on the small business concerns participating in the
15 program as a prime contractor, subcontractor, or supplier at
16 any tier;

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

21 (C) conducting appropriate programs to inform the affected
22 small business community regarding the anticipated adverse im-
23 pacts identified under subparagraph (A) and the economic adjust-
24 ment assistance available to small business concerns; and

25 (D) assisting small business concerns in developing and imple-
26 menting an individualized transition business plan;

27 (8)(A) maintaining current information concerning Federal, State,
28 and local regulations that affect small business concerns and counsel
29 small business concerns on methods of compliance; and

30 (B) providing counseling and technology development when necessary
31 to help small business concerns find solutions for complying with envi-
32 ronmental, energy, health, safety, and other Federal, State, and local
33 regulations;

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

36 (10) providing and maintaining a comprehensive library that con-
37 tains current information and statistical data needed by small business
38 concerns;

39 (11) maintaining a working relationship and open communications
40 with the financial and investment communities, legal associations, local
41 and regional private consultants, and local and regional small business

1 groups and associates to help address the various needs of the small
2 business community;

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

6 (13) in cooperation with the Department of Commerce, the Adminis-
7 trator, and relevant Federal agencies, actively assisting rural small
8 business concerns in exporting by—

9 (A) identifying and developing potential export markets for
10 rural small business concerns;

11 (B) facilitating export transactions for rural small business con-
12 cerns;

13 (C) developing linkages between rural small business concerns
14 and prescreened foreign buyers;

15 (D) assisting rural small business concerns in participating in
16 international trade shows; and

17 (E) assisting rural small business concerns in obtaining export
18 financing and developing marketing and production strategies;

19 (14) assisting rural small business concerns in developing marketing
20 and production strategies that will enable rural small business concerns
21 to better compete in the domestic market;

22 (15) assisting rural small business concerns by—

23 (A) providing technical assistance needed by rural small busi-
24 ness concerns;

25 (B) making available managerial assistance to rural small busi-
26 ness concerns; and

27 (C) providing information and assistance in obtaining financing
28 for business startups and expansion;

29 (16) in conjunction with the United States National Tourism Orga-
30 nization, assist rural small business concerns in developing the tourism
31 potential of rural communities by—

32 (A) identifying the cultural, historic, recreational, and scenic re-
33 sources of rural communities;

34 (B) providing assistance to small business concerns in develop-
35 ing tourism marketing and promotion plans relating to tourism in
36 rural areas; and

37 (C) assisting small business concerns in obtaining capital for
38 starting or expanding businesses primarily serving tourists;

39 (17) maintaining lists of local and regional private consultants to
40 whom small business concerns can be referred;

1 (18) providing information to small business concerns regarding
2 compliance with regulatory requirements;

3 (19) developing informational publications, establishing resource cen-
4 ters of reference materials, and distributing compliance guides pub-
5 lished under section 212(a) of the Small Business Regulatory Enforce-
6 ment Fairness Act of 1996 (5 U.S.C. 601 note, Public Law 104–121);

7 (20) providing small business concern owners with access to a wide
8 variety of export-related information by establishing on-line computer
9 linkages between small business development centers and an inter-
10 national trade data information network with ties to the United States
11 Export Assistance Center program; and

12 (21) providing information and assistance to small business concerns
13 with respect to establishing drug-free workplace programs on or before
14 October 1, 2006.

15 (c) UPGRADING AND MODIFICATION OF SERVICES.—A small business de-
16 velopment center shall continue to upgrade and modify its services, as need-
17 ed, in order to meet the changing and evolving needs of the small business
18 community.

19 (d) LOCATION.—

20 (1) PROXIMITY OF SERVICE.—A small business development center
21 shall provide service as close as possible to small business concerns by
22 providing extension services and using satellite locations when nec-
23 essary.

24 (2) FACILITIES AND STAFF.—The facilities and staff of a small busi-
25 ness development center shall be located in such places as to provide
26 maximum accessibility and benefits to the small business concerns that
27 the small business development center is intended to serve.

28 (e) OTHER PROGRAMS.—To the extent possible, a small business develop-
29 ment center shall make full use of other Federal and State government pro-
30 grams that are concerned with aiding small business concerns.

31 (f) STAFF.—A small business development center shall have a full-time
32 staff, including a full-time director who shall have the authority to make
33 expenditures under the small business development center’s budget and who
34 shall manage the program activities.

35 (g) ACCESS.—A small business development center shall have access to—

36 (1) business analysts to counsel, assist, and inform small business
37 clients;

38 (2) technology transfer agents to provide state-of-art technology to
39 small business concerns through coupling with national and regional
40 technology data sources;

1 (3) information specialists to assist in providing information searches
2 and referrals to small business;

3 (4) part-time professional specialists to conduct research or to pro-
4 vide counseling assistance whenever the need arises; and

5 (5) laboratory facilities and adaptive engineering facilities.

6 (h) USE OF SMALL BUSINESS VENDORS.—A small business development
7 center shall use and compensate as 1 of its resources qualified vendors that
8 are small business concerns, including private management consultants, pri-
9 vate consulting engineers, and private testing laboratories, to provide serv-
10 ices as described in this section to small business concerns on behalf of the
11 small business development center.

12 (i) COOPERATION IN THE PROVISION OF SERVICES.—In performing the
13 services described in subsection (b), a small business development center
14 shall work in close cooperation with SBA regional offices and SBA local of-
15 fices, the local small business community, and appropriate State and local
16 agencies.

17 (j) INFORMATION SHARING SYSTEM.—

18 (1) IN GENERAL.—The Associate Administrator, in consultation with
19 the small business development centers, shall develop and implement an
20 information sharing system.

21 (2) FINANCIAL ASSISTANCE.—

22 (A) IN GENERAL.—Subject to amounts approved in advance in
23 appropriations Acts, the Administrator may provide grants or
24 enter into cooperative agreements to 1 or more small business de-
25 velopment centers to carry out this subsection.

26 (B) DURATION.—Financial assistance under subparagraph (A)
27 shall be awarded for a period of not more than 5 years.

28 (C) MATCHING FUNDS.—The matching funds provisions of sec-
29 tion 271102 of this title shall not be applicable to a grant or coop-
30 erative agreement under subparagraph (A).

31 (3) FUNCTIONS.—The information sharing system shall—

32 (A) allow small business development centers participating in
33 the small business development center program to exchange infor-
34 mation about their programs; and

35 (B) provide information central to technology transfer.

36 **§ 271105. Export enhancement plans**

37 (a) IN GENERAL.—Where appropriate, a small business development cen-
38 ter shall work in conjunction with the relevant State agency and the Depart-
39 ment of Commerce to develop a comprehensive plan for enhancing the ex-
40 port potential of small business concerns located in the State.

1 (b) STATE OFFICE OF INTERNATIONAL TRADE.—An export enhancement
2 plan may provide for—

3 (1) the cofunding and staffing of a State office of international trade
4 within a small business development center, using joint Federal and
5 State funding; and

6 (2) any other appropriate measures directed at improving the export
7 performance of small business concerns in the State.

8 **§ 271106. Assistance from Federal laboratories**

9 (a) IN GENERAL.—A laboratory that is operated and funded by the Fed-
10 eral Government shall cooperate with the Administrator in developing and
11 establishing programs to support small business development centers by—

12 (1) making facilities and equipment available;

13 (2) providing experiment station capabilities in adaptive engineering;

14 (3) providing library and technical information processing capabili-
15 ties; and

16 (4) providing professional staff for consulting.

17 (b) REIMBURSEMENT.—The Administrator may reimburse a laboratory
18 for the provision of services described in subsection (a).

19 **§ 271107. Assistance from the National Science Foundation**

20 The National Science Foundation shall cooperate with the Administrator
21 and with small business development centers in developing and establishing
22 programs to support small business development centers.

23 **§ 271108. Assistance from the National Aeronautics and
24 Space Administration**

25 The National Aeronautics and Space Administration and regional tech-
26 nology transfer centers supported by the National Aeronautics and Space
27 Administration shall cooperate with small business development centers par-
28 ticipating in the small business development center program.

29 **§ 271109. National Small Business Development Center Ad-
30 visory Board**

31 (a) ESTABLISHMENT.—There is established a National Small Business
32 Development Center Advisory Board (referred to in this section as the
33 “Board”).

34 (b) MEMBERSHIP.—

35 (1) IN GENERAL.—The Board shall consist of 9 members appointed
36 from civilian life by the Administrator.

37 (2) QUALIFICATIONS.—A member of the Board shall be a person of
38 outstanding qualifications known to be familiar and sympathetic with
39 small business needs and problems.

40 (3) REPRESENTATION.—Not more than 3 members of the Board
41 shall be from universities or their affiliates, and 6 members shall be

1 from small business concerns or associations representing small busi-
2 ness concerns.

3 (4) TERM.—A member of the Board shall serve a term of 3 years,
4 with one-third of the members changing each year.

5 (e) CHAIRMAN.—The Board shall elect a chairman.

6 (d) DUTIES.—The Board shall advise, counsel, and confer with the Asso-
7 ciate Administrator in carrying out the duties described in this chapter.

8 (e) MEETINGS.—The Board shall meet at least semiannually and at the
9 call of the Chairman of the Board.

10 (f) COMPENSATION.—A member of the Board shall be entitled to be com-
11 pensated at the rate not in excess of the per diem equivalent of the maxi-
12 mum rate payable under section 5376 of title 5 for each day engaged in
13 activities of the Board and shall be entitled to be reimbursed for expenses
14 as a member of the Board.

15 **§ 271110. Small business development center advisory**
16 **boards**

17 (a) ESTABLISHMENT.—A small business development center shall estab-
18 lish an advisory board.

19 (b) CHAIRMAN.—A small business development center advisory board
20 shall elect a chairman.

21 (c) DUTIES.—A small business development center advisory board shall
22 advise, counsel, and confer with the director of the small business develop-
23 ment center on all policy matters pertaining to the operation of the small
24 business development center, including the persons that may be eligible to
25 receive assistance from, and how local and regional private consultants may
26 participate with, the small business development center.

27 **§ 271111. Program examination and accreditation**

28 (a) EXAMINATION.—The Administrator shall conduct a biennial pro-
29 grammatic and financial examination of each small business development
30 center.

31 (b) ACCREDITATION.—The Administrator may provide financial support,
32 by contract or otherwise, to the Association for the purpose of developing
33 a small business development center accreditation program.

34 (c) EXTENSION OR RENEWAL OF FINANCIAL AGREEMENTS.—

35 (1) IN GENERAL.—In extending or renewing a financial assistance
36 agreement of a small business development center, the Administrator
37 shall consider the results of the examination and accreditation program
38 conducted under subsections (a) and (b).

39 (2) ACCREDITATION REQUIREMENT.—

40 (A) IN GENERAL.—Except as provided in subparagraph (B), the
41 Administrator may not renew or extend a financial assistance

1 agreement with a small business development center unless the
2 small business development center has been approved under the
3 accreditation program conducted under this section.

4 (B) WAIVER.—The Associate Administrator may waive the ac-
5 creditation requirement on a showing that the small business de-
6 velopment center is making a good faith effort to obtain accredita-
7 tion.

8 **§ 271112. Limitations on authority**

9 (a) APPROPRIATIONS.—The authority to enter into financial assistance
10 agreements under this chapter shall be in effect for a fiscal year only to
11 the extent and in such amounts as are provided in advance in appropria-
12 tions Acts.

13 (b) SUSPENSION, TERMINATION, OR FAILURE TO RENEW OR EXTEND
14 FINANCIAL ASSISTANCE AGREEMENT.—After the Administrator enters into
15 a financial assistance agreement with a qualified entity under this chapter,
16 the Administrator shall not suspend, terminate, or fail to renew or extend
17 the financial assistance agreement unless the Administrator provides the
18 qualified entity with written notification stating the reasons for the suspen-
19 sion, termination, or failure to renew or extend and affording the qualified
20 entity an opportunity for a hearing, appeal, or other administrative proceed-
21 ing under chapter 5 of title 5.

22 (c) COMPETITION FOR SUCCESSOR FINANCIAL ASSISTANCE AGREE-
23 MENTS.—If a financial assistance agreement with a qualified entity under
24 this chapter is not renewed or extended, any award of a successor financial
25 assistance agreement to another qualified entity under this chapter shall be
26 made on a competitive basis.

27 (d) NO OTHER FUNDING.—The Administrator shall not fund any small
28 business development center or variation of a small business development
29 center except as authorized by this chapter.

30 **§ 271113. Prohibition of fees for counseling service**

31 A small business development center shall not impose or otherwise collect
32 a fee or other compensation in connection with the provision of counseling
33 service under this chapter.

34 **§ 271114. Veterans assistance and services program**

35 (a) IN GENERAL.—A small business development center may apply for a
36 grant under this section to carry out a veterans assistance and services pro-
37 gram.

38 (b) ELEMENTS OF PROGRAM.—Under a program carried out with a grant
39 under this section, a small business development center shall—

40 (1) create a marketing campaign to promote awareness and edu-
41 cation of the services of the small business development center that are

1 available to veterans, and to target the campaign toward veterans, serv-
2 ice-disabled veterans, military units, Federal agencies, and veterans or-
3 ganizations;

4 (2) use technology-assisted online counseling and distance learning
5 technology to overcome the impediments to entrepreneurship faced by
6 veterans and members of the Armed Forces; and

7 (3) increase coordination among organizations that assist veterans,
8 including by establishing virtual integration of service providers and of-
9 ferings for a 1-stop point of contact for veterans who are entrepreneurs
10 or owners of small business concerns.

11 (c) AMOUNT OF GRANTS.—A grant under this section shall be for not less
12 than \$75,000 and not more than \$250,000.

13 (d) FUNDING.—Subject to amounts approved in advance in appropria-
14 tions Acts, the Administrator may make grants or enter into cooperative
15 agreements to carry out this section.

16 **§ 271115. Grants for small business development centers**

17 (a) IN GENERAL.—The Administrator may make grants to small business
18 development centers to provide targeted technical assistance to small busi-
19 ness concerns seeking—

20 (1) access to capital or credit;

21 (2) Federal procurement opportunities;

22 (3) energy efficiency audits to reduce energy bills;

23 (4) opportunities to export products or provide services to foreign
24 customers;

25 (5) assistance in adopting, making innovations in, and using broad-
26 band technologies; or

27 (6) other assistance.

28 (b) ALLOCATION.—

29 (1) IN GENERAL.—Subject to paragraph (2), and notwithstanding
30 the requirements of section 271102(g)(2)(C) of this title, the amount
31 appropriated to carry out this section shall be allocated under the for-
32 mula under section 271102(g)(2)(A) of this title.

33 (2) MINIMUM FUNDING.—The amount made available under this sec-
34 tion to each State shall be not less than \$325,000.

35 (3) TYPES OF USES.—Of the total amount of the grants awarded by
36 the Administrator under this section—

37 (A) not less than 80 percent shall be used for counseling of
38 small business concerns; and

39 (B) not more than 20 percent may be used for classes or semi-
40 nars.

1 (e) NO NON-FEDERAL SHARE.—Notwithstanding section
2 271102(g)(1)(A) of this title, the recipient of a grant under this section
3 shall not be required to provide non-Federal matching funds.

4 (d) DISTRIBUTION.—Not later than 30 days after the date on which
5 amounts are appropriated to carry out this section, the Administrator shall
6 disburse the total amount appropriated.

7 **Division K—Women’s Business Center**
8 **Program**

9 **Chapter 273—Women’s Business Center**
10 **Program**

Sec.

273101. Definitions.

273102. Financial assistance.

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11 **§ 273101. Definitions**

12 In this chapter:

13 (1) ASSISTANT ADMINISTRATOR.—The term “Assistant Adminis-
14 trator” means the Assistant Administrator of the Office of Women’s
15 Business Ownership.

16 (2) PRIVATE NONPROFIT ORGANIZATION.—The term “private non-
17 profit organization” means an entity that is described in section 501(c)
18 of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt
19 from taxation under section 501(a) of the Code (26 U.S.C. 501(a)).

20 (3) WOMEN’S BUSINESS CENTER SITE.—The term “women’s busi-
21 ness center site” means the location of—

22 (A) a women’s business center; or

23 (B) 1 or more women’s business centers, established in conjunc-
24 tion with another women’s business center in another location in
25 a State or region—

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

28 (ii) the services of which are targeted to women; and

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

1 **§ 273102. Financial assistance**

2 (a) IN GENERAL.—The Administrator may provide financial assistance to
3 a private nonprofit organization to conduct a 5-year project for the benefit
4 of small business concerns owned and controlled by women.

5 (b) FORMS OF ASSISTANCE.—A project under subsection (a) shall pro-
6 vide—

7 (1) assistance in matters relating to financing, including training
8 and counseling in—

9 (A) how to apply for and secure business credit and investment
10 capital;

11 (B) preparing and presenting financial statements; and

12 (C) managing cash flow and other financial operations of a busi-
13 ness concern;

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

17 (3) marketing assistance, including training and counseling in—

18 (A) identifying and segmenting domestic and international mar-
19 ket opportunities;

20 (B) preparing and executing marketing plans;

21 (C) developing pricing strategies;

22 (D) locating contract opportunities;

23 (E) negotiating contracts; and

24 (F) using varying public relations and advertising techniques.

25 (c) APPROPRIATIONS.—The authority of the Administrator to agree to
26 provide financial assistance shall be in effect for each fiscal year only to the
27 extent and in the amounts as are provided in advance in appropriations
28 Acts.

29 **§ 273103. Conditions of participation**

30 (a) NON-FEDERAL CONTRIBUTIONS.—As a condition of receiving finan-
31 cial assistance under this chapter, a recipient organization shall agree to ob-
32 tain, after its application has been approved and notice of award has been
33 issued, cash contributions from non-Federal sources as follows:

34 (1) In the 1st and 2d years, 1 non-Federal dollar for each 2 Federal
35 dollars.

36 (2) In the 3d, 4th, and 5th years, 1 non-Federal dollar for each Fed-
37 eral dollar.

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

- 1 (c) FORM OF FEDERAL CONTRIBUTIONS.—
2 (1) IN GENERAL.—Financial assistance under this chapter—
3 (A) may be made by grant, contract, or cooperative agreement;
4 and
5 (B) may be provided—
6 (i) in a lump sum or in installments; and
7 (ii) in advance or by reimbursement.
- 8 (2) PARTIAL DISBURSEMENT BEFORE NON-FEDERAL FUNDS ARE OB-
9 TAINED.—The Administrator may disburse up to 25 percent of each
10 year's Federal share awarded to a recipient organization after notice
11 of the award has been issued and before the non-Federal sector match-
12 ing funds are obtained.
- 13 (3) FAILURE TO OBTAIN NON-FEDERAL FUNDING.—If a recipient of
14 assistance fails to obtain the required non-Federal contribution during
15 a project—
16 (A) the recipient shall not be eligible thereafter for advance dis-
17 bursements—
18 (i) during the remainder of that project; or
19 (ii) for any other project for which the recipient is or may
20 be funded by the Administrator; and
21 (B) before approving assistance to the recipient for any other
22 project, the Administrator shall—
23 (i) specifically determine whether the Administrator be-
24 lieves that the recipient will be able to obtain the requisite
25 non-Federal funding; and
26 (ii) make a written finding stating the reasons for making
27 the determination.

28 **§ 273104. Contract authority**

29 (a) IN GENERAL.—A women's business center may enter into a contract
30 with a Federal agency to provide specific assistance to women and other un-
31 derserved small business concerns.

32 (b) LIMITATION.—Performance of a contract under subsection (a) should
33 not hinder a women's business center in carrying out the terms of the grant,
34 contract, or cooperative agreement received by the women's business center
35 from the Administrator.

36 **§ 273105. 5-year period**

37 (a) SUBMISSION OF PLAN.—An organization that applies for financial as-
38 sistance under this chapter initially shall submit a 5-year plan to the Ad-
39 ministrator on proposed fundraising and training activities.

1 (b) ASSISTANCE PERIOD.—An organization may receive financial assist-
2 ance under this chapter for any 1 women’s business center site for a maxi-
3 mum of 5 years.

4 **§ 273106. Criteria**

5 (a) IN GENERAL.—The Administrator shall evaluate and rank applicants
6 in accordance with predetermined selection criteria that shall be stated in
7 terms of relative importance.

8 (b) AVAILABILITY.—The criteria and their relative importance shall be
9 made publicly available and stated in each solicitation for applications made
10 by the Administrator.

11 (c) CRITERIA INCLUDED.—The criteria shall include—

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

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

17 (3) the ability of the applicant to provide training and services to
18 a representative number of women who are both socially and economi-
19 cally disadvantaged; and

20 (4) the location for the women’s business center site proposed by the
21 applicant.

22 **§ 273107. Program examination**

23 (a) IN GENERAL.—The Administrator shall—

24 (1) conduct an annual programmatic and financial examination of
25 each women’s business center under which a women’s business center
26 shall provide to the Administrator—

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

29 (B)(i) documentation regarding the amount of matching assist-
30 ance from non-Federal sources obtained and expended by the
31 women’s business center during the preceding year to meet the re-
32 quirements of section 273103 of this title; and

33 (ii) with respect to any in-kind contributions described in sec-
34 tion 273103(b) of this title that were used to satisfy the require-
35 ments of section 273103 of this title, verification of the existence
36 and valuation of those contributions; and

37 (2) analyze the results of each such examination and, based on that
38 analysis, make a determination regarding the programmatic and finan-
39 cial viability of each women’s business center.

1 (b) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to
2 award a sustainability grant or renew financial assistance to a women’s
3 business center, the Administrator—

4 (1) shall consider the results of the most recent examination of the
5 women’s business center under subsection (a); and

6 (2) may withhold the award or renewal if the Administrator deter-
7 mines that—

8 (A)(i) the women’s business center has failed to provide any in-
9 formation required to be provided under subparagraph (A) or (B)
10 of subsection (a)(1); or

11 (ii) the information provided by the women’s business center is
12 inadequate; or

13 (B)(i) the women’s business center has failed to provide any in-
14 formation required to be provided by the women’s business center
15 for purposes of the report of the Administrator under section
16 107111 of this title; or

17 (ii) the information provided by the women’s business center is
18 inadequate.

19 **§ 273108. Suspension, termination, or failure to renew or ex-**
20 **tend financial assistance**

21 After the Administrator agrees to provide financial assistance to an appli-
22 cant under this chapter, the Administrator shall not suspend, terminate, or
23 fail to renew or extend the financial assistance unless the Administrator—

24 (1) provides the applicant with written notification stating the rea-
25 sons for suspension, termination, or failure to renew or extend; and

26 (2) affords the applicant an opportunity for a hearing, appeal, or
27 other administrative proceeding under chapter 5 of title 5.

28 **§ 273109. Continued funding for women’s business centers**

29 (a) IN GENERAL.—A nonprofit organization described in subsection (b)
30 shall be eligible to receive, subject to subsection (c), a 3-year grant under
31 this subsection.

32 (b) APPLICABILITY.—A nonprofit organization described in this sub-
33 section is a nonprofit organization that has received funding under section
34 273102 of this title.

35 (c) APPLICATION AND APPROVAL CRITERIA.—

36 (1) CRITERIA.—Subject to paragraph (2), the Administrator shall
37 develop and publish criteria for the consideration and approval of appli-
38 cations by nonprofit organizations under this section.

39 (2) CONTENTS.—Except as otherwise provided in this section, the
40 conditions for participation in the grant program under this section
41 shall be the same as the conditions for participation in the program

1 under section 29(l) of the Small Business Act (15 U.S.C. 656(l)) (as
2 in effect on May 25, 2007).

3 (3) NOTIFICATION.—Not later than 60 days after the date of the
4 deadline to submit applications for each fiscal year, the Administrator
5 shall approve or deny any application under this section and notify the
6 applicant for each such application.

7 (d) AWARD OF GRANTS.—

8 (1) IN GENERAL.—Subject to the availability of appropriations, the
9 Administrator shall provide to an applicant approved under this section
10 a grant for the Federal share of the cost of activities described in the
11 application.

12 (2) AMOUNT.—A grant under this section shall be for not more than
13 \$150,000 for each year of the grant.

14 (3) FEDERAL SHARE.—The Federal share of the cost of activities
15 funded under this section shall be not more than 50 percent.

16 (4) PRIORITY.—In allocating funds made available for grants under
17 this chapter, the Administrator shall give applications under this sec-
18 tion priority over 1st-time applications under section 273102 of this
19 title.

20 (e) RENEWAL.—

21 (1) IN GENERAL.—The Administrator may renew a grant under this
22 section for additional 3-year periods, if the nonprofit organization sub-
23 mits an application for renewal at such time, in such manner, and ac-
24 companied by such information as the Administrator may establish.

25 (2) UNLIMITED RENEWALS.—There shall be no limitation on the
26 number of times that a grant may be renewed under paragraph (1).

27 **§ 273110. Privacy requirements**

28 (a) IN GENERAL.—A women's business center may not disclose the name,
29 address, or telephone number of any individual or small business concern
30 receiving assistance under this chapter without the consent of the individual
31 or small business concern, unless—

32 (1) the Administrator is ordered to make such a disclosure by a
33 court in any civil or criminal enforcement action initiated by a Federal
34 agency or State agency; or

35 (2) the Administrator considers such a disclosure to be necessary for
36 the purpose of conducting a financial audit of a women's business cen-
37 ter, but a disclosure under this paragraph shall be limited to the infor-
38 mation necessary for the audit.

39 (b) USE OF INFORMATION BY THE ADMINISTRATOR.—This section does
40 not—

41 (1) restrict access by the Administrator to program activity data; or

1 (2) preclude the Administrator from using client information (other
2 than the information described in paragraph (1)) to conduct client sur-
3 veys.

4 (e) REGULATIONS.—The Administrator shall issue regulations to establish
5 standards for requiring disclosures during a financial audit under subsection
6 (a)(2).

7 **§ 273111. Expedited acquisition**

8 Notwithstanding any other provision of law, the Administrator, acting
9 through the Assistant Administrator, may use such expedited acquisition
10 methods as the Administrator determines to be appropriate to carry out this
11 chapter, except that the Administrator shall ensure that all small business
12 sources are provided a reasonable opportunity to submit proposals.

13 **Division L—Veterans and Reservists**
14 **Chapter 275—Veterans and Reservists**

Sec.

275101. Definitions.

275102. Veterans business development interagency task force.

275103. Advisory Committee on Veterans Business Affairs.

275104. Participation in transition assistance program workshops.

275105. Women veterans business training

275106. Information collection.

275107. Entrepreneurial training, counseling, and management assistance.

275108. Outreach.

275109. Memorandum of understanding with SCORE.

275110. Memorandum of understanding with the Secretary of Veterans Affairs and the Asso-
ciation.

275111. Dissemination of information.

275112. Memorandum of understanding with the Secretary of Labor and the Secretary of
Veterans Affairs.

275113. Data collection.

275114. Relief from time limitations.

15 **§ 275101. Definitions**

16 In this chapter:

17 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-
18 trator” means the Associate Administrator for Veterans Business De-
19 velopment under section 103104(b) of this title.

20 (2) ADVISORY COMMITTEE.—The term “Advisory Committee” means
21 the Advisory Committee on Veterans Business Affairs established
22 under section 275103.

23 (3) INTERAGENCY TASK FORCE.—The term “Interagency Task
24 Force” means the veterans business development interagency task force
25 established under section 275102.

26 **§ 275102. Veterans business development interagency task**
27 **force**

28 (a) ESTABLISHMENT.—The President shall establish an interagency task
29 force to coordinate the efforts of Federal agencies necessary to improve cap-
30 ital and business development opportunities for, and ensure achievement of

1 the pre-established Federal contracting goals for, small business concerns
2 owned and controlled by service-disabled veterans and small business con-
3 cerns owned and controlled by veterans.

4 (b) MEMBERSHIP.—The members of the Interagency Task Force shall in-
5 clude—

6 (1) the Administrator, who shall serve as chairperson of the Inter-
7 agency Task Force;

8 (2) a senior level representative from—

9 (A) the Department of Veterans Affairs;

10 (B) the Department of Defense;

11 (C) SBA (in addition to the Administrator);

12 (D) the Department of Labor;

13 (E) the Department of the Treasury;

14 (F) the General Services Administration;

15 (G) the Office of Management and Budget; and

16 (3) 4 representatives from a veterans service organization or military
17 organization or association, selected by the President.

18 (c) DUTIES.—The Interagency Task Force shall—

19 (1) consult regularly with veterans service organizations and military
20 organizations in performing the duties of the Interagency Task Force;
21 and

22 (2) coordinate administrative and regulatory activities and develop
23 proposals relating to—

24 (A) improving capital access and capacity of small business con-
25 cerns owned and controlled by service-disabled veterans and small
26 business concerns owned and controlled by veterans through loans,
27 surety bonding, and franchising;

28 (B) ensuring achievement of the pre-established Federal con-
29 tracting goals for small business concerns owned and controlled by
30 service-disabled veterans and small business concerns owned and
31 controlled by veterans through expanded mentor-protégé assistance
32 and matching such small business concerns with contracting op-
33 portunities;

34 (C) increasing the integrity of certifications of status as a small
35 business concern owned and controlled by service-disabled veterans
36 or a small business concern owned and controlled by veterans;

37 (D) reducing paperwork and administrative burdens on veterans
38 in accessing business development and entrepreneurship opportuni-
39 ties;

1 (E) increasing and improving training and counseling services
2 provided to small business concerns owned and controlled by veter-
3 ans; and

4 (F) making other improvements relating to the support for vet-
5 erans business development by the Federal Government.

6 **§ 275103. Advisory Committee on Veterans Business Affairs**

7 (a) IN GENERAL.—There is established an advisory committee to be
8 known as the Advisory Committee on Veterans Business Affairs, which shall
9 serve as an independent source of advice and policy recommendations to—

- 10 (1) the Administrator;
11 (2) the Associate Administrator;
12 (3) Congress;
13 (4) the President; and
14 (5) other United States policymakers.

15 (b) MEMBERSHIP.—

16 (1) IN GENERAL.—The Committee shall be composed of 15 members
17 appointed by the Administrator, of whom—

18 (A) 8 shall be veterans who are owners of small business con-
19 cerns; and

20 (B) 7 shall be representatives of veterans organizations.

21 (2) POLITICAL AFFILIATION.—Not more than 8 members of the
22 Committee shall be of the same political party as the President.

23 (3) PROHIBITION OF FEDERAL EMPLOYMENT.—

24 (A) IN GENERAL.—Except as provided in subparagraph (B), no
25 member of the Advisory Committee may serve as an officer or em-
26 ployee of the United States.

27 (B) EXCEPTION.—A member of the Advisory Committee who
28 accepts a position as an officer or employee of the United States
29 after the date of the member's appointment to the Advisory Com-
30 mittee may continue to serve on the Advisory Committee for not
31 more than 30 days after accepting the position.

32 (4) TERM OF SERVICE.—The term of service of a member of the Ad-
33 visory Committee shall be 3 years.

34 (5) VACANCIES.—The Administrator shall fill any vacancies on the
35 membership of the Advisory Committee not later than 30 days after
36 the date on which the vacancy occurs.

37 (6) CHAIRPERSON.—

38 (A) IN GENERAL.—The members of the Advisory Committee
39 shall elect 1 of the members to be Chairperson of the Advisory
40 Committee.

1 (B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in
2 the office of the Chairperson of the Advisory Committee shall be
3 filled by the Advisory Committee at the 1st meeting of the Advi-
4 sory Committee following the date on which the vacancy occurs.

5 (c) DUTIES.—The duties of the Advisory Committee shall be to—

6 (1) review, coordinate, and monitor plans and programs, developed
7 in the public and private sectors, that affect the ability of small busi-
8 ness concerns owned and controlled by veterans to obtain capital and
9 credit and to access markets;

10 (2) promote the collection of business information and survey data
11 as they relate to veterans and small business concerns owned and con-
12 trolled by veterans;

13 (3) monitor and promote plans, programs, and operations of Federal
14 agencies that may contribute to the formation and growth of small
15 business concerns owned and controlled by veterans;

16 (4) develop and promote initiatives, policies, programs, and plans de-
17 signed to foster small business concerns owned and controlled by veter-
18 ans; and

19 (5) develop a comprehensive plan, to be updated annually, for joint
20 public-private sector efforts to facilitate growth and development of
21 small business concerns owned and controlled by veterans.

22 (d) POWERS.—

23 (1) HEARINGS.—Subject to subsection (e), the Advisory Committee
24 may hold such hearings, sit and act at such times and places, take such
25 testimony, and receive such evidence as the Advisory Committee consid-
26 ers advisable to carry out its duties.

27 (2) INFORMATION FROM FEDERAL AGENCIES.—On request of the
28 Chairperson of the Advisory Committee, the head of any Federal agen-
29 cy or the Government Accountability Office shall furnish such informa-
30 tion to the Advisory Committee as the Advisory Committee considers
31 to be necessary to carry out its duties.

32 (3) USE OF MAILS.—The Advisory Committee may use the United
33 States mails in the same manner and under the same conditions as
34 other Federal agencies.

35 (4) GIFTS.—The Advisory Committee may accept, use, and dispose
36 of gifts or donations of services or property.

37 (e) MEETINGS.—

38 (1) IN GENERAL.—The Advisory Committee shall meet, not less than
39 3 times per year, at the call of the Chairperson or at the request of
40 the Administrator.

1 (2) LOCATION.—Each meeting of the full Advisory Committee shall
2 be held at the SBA headquarters in Washington, District of Columbia.
3 The Administrator shall provide suitable meeting facilities and such ad-
4 ministrative support as is necessary for each full meeting of the Advi-
5 sory Committee.

6 (3) TASK GROUPS.—The Advisory Committee may from time to time
7 establish temporary task groups as may be necessary in order to carry
8 out the duties of the Advisory Committee.

9 (f) COMPENSATION AND EXPENSES.—

10 (1) NO COMPENSATION.—Members of the Advisory Committee shall
11 serve without compensation for their service to the Advisory Commit-
12 tee.

13 (2) EXPENSES.—The members of the Advisory Committee shall be
14 reimbursed for travel and subsistence expenses in accordance with sec-
15 tion 5703 of title 5.

16 (g) REPORT.—Not later than 30 days after the end of each fiscal year,
17 the Committee shall submit to Congress and the President a report describ-
18 ing the activities of the Advisory Committee and any recommendations de-
19 veloped by the Advisory Committee for the promotion of small business con-
20 cerns owned and controlled by veterans.

21 **§ 275104. Participation in transition assistance program**
22 **workshops**

23 (a) IN GENERAL.—The Associate Administrator shall increase veteran
24 outreach by ensuring that veteran business outreach centers regularly par-
25 ticipate, on a nationwide basis, in the workshops of the transition assistance
26 program of the Department of Labor.

27 (b) PRESENTATIONS.—In carrying out subsection (a), a veteran business
28 outreach center may provide grants to entities located in transition assist-
29 ance program locations to make presentations on the opportunities available
30 from the Administrator for recently separating or separated veterans. A
31 presentation under this subsection shall include, at a minimum, a descrip-
32 tion of the entrepreneurial and business training resources available from
33 the Administrator.

34 (c) WRITTEN MATERIALS.—The Associate Administrator shall—

35 (1) create written materials that provide comprehensive information
36 on self-employment and veterans entrepreneurship, including informa-
37 tion on resources available from the Administrator on such topics; and

38 (2) make the materials created under paragraph (1) available to the
39 Secretary of Labor for inclusion in the transition assistance program
40 manual.

1 (d) REPORTS.—The Associate Administrator shall submit to Congress
2 progress reports on the implementation of this section.

3 **§ 275105. Women veterans business training**

4 The Associate Administrator shall—

5 (1) compile information on existing resources available to women vet-
6 erans for business training, including resources for—

7 (A) vocational and technical education;

8 (B) general business skills, such as marketing and accounting;

9 and

10 (C) business assistance programs targeted to women veterans;

11 and

12 (2) disseminate the information compiled under paragraph (1)
13 through veteran business outreach centers and women’s business cen-
14 ters.

15 **§ 275106. Information collection**

16 (a) IDENTIFICATION.—The Secretary of Veterans Affairs, in consultation
17 with the Assistant Secretary for Veterans’ Employment and Training and
18 the Administrator, shall engage in efforts each year to identify small busi-
19 ness concerns owned and controlled by disabled veterans in the United
20 States.

21 (b) PROVISION OF INFORMATION.—The Secretary of Veterans Affairs
22 shall inform each small business concern identified under this section that
23 information on Federal procurement is available from the Administrator.

24 **§ 275107. Entrepreneurial training, counseling, and manage-
25 ment assistance**

26 The Administrator shall take such actions as are necessary to ensure that
27 small business concerns owned and controlled by disabled veterans have ac-
28 cess to programs established under this subtitle that provide entrepreneurial
29 training, business development assistance, counseling, and management as-
30 sistance to small business concerns, including, among others, the small busi-
31 ness development center program and the SCORE program.

32 **§ 275108. Outreach**

33 (a) IN GENERAL.—The Administrator, the Secretary of Veterans Affairs,
34 and the Assistant Secretary of Labor for Veterans’ Employment and Train-
35 ing shall develop and implement a program of comprehensive outreach to
36 assist disabled veterans.

37 (b) ACTIVITIES.—The program under subsection (a) shall include busi-
38 ness training and management assistance, employment and relocation coun-
39 seling, and dissemination of information on veterans’ benefits and veterans’
40 entitlements.

1 **§ 275109. Memorandum of understanding with SCORE**

2 (a) IN GENERAL.—The Administrator shall enter into a memorandum of
3 understanding with SCORE to provide for—

4 (1) the appointment by SCORE in its national office of an individual
5 to act as National Veterans Business Coordinator, whose duties shall
6 relate exclusively to veterans business matters, and who shall be re-
7 sponsible for the establishment and administration of a program to
8 coordinate counseling and training regarding entrepreneurship to veter-
9 ans through the chapters of SCORE throughout the United States;

10 (2) the provision of assistance by SCORE in maintaining a toll-free
11 telephone number and a website to provide access for veterans to infor-
12 mation about the counseling and training regarding entrepreneurship
13 available to veterans through SCORE; and

14 (3) the collection of statistics concerning services provided by
15 SCORE to service-disabled veterans and other veterans for inclusion in
16 each annual report published by the Administrator under section
17 107114 of this title.

18 (b) RESOURCES.—The Administrator shall provide SCORE such re-
19 sources as the Administrator determines to be necessary for SCORE to
20 carry out the requirements of the memorandum of understanding specified
21 under subsection (a).

22 **§ 275110. Memorandum of understanding with the Secretary**
23 **of Veterans Affairs and the Association**

24 (a) IN GENERAL.—The Secretary of Veterans Affairs, the Administrator,
25 and the head of the Association shall enter into a memorandum of under-
26 standing with respect to entrepreneurial assistance to service-disabled veter-
27 ans and other veterans through small business development centers and fa-
28 cilities of the Department of Veterans Affairs.

29 (b) FORMS OF ASSISTANCE.—Assistance provided under the memoran-
30 dum of understanding shall include—

31 (1) conducting of studies and research, and the distribution of infor-
32 mation generated by such studies and research, on the formation, man-
33 agement, financing, marketing, and operation of small business con-
34 cerns by veterans;

35 (2) provision of training and counseling to veterans concerning the
36 formation, management, financing, marketing, and operation of small
37 business concerns;

38 (3) provision of management and technical assistance to the owners
39 and operators of small business concerns regarding international mar-
40 kets, the promotion of exports, and the transfer of technology;

1 (4) provision of assistance and information to veterans regarding
2 procurement opportunities with Federal, State, and local agencies, es-
3 pecially such agencies funded in whole or in part with Federal funds;

4 (5) establishment of an information clearinghouse to collect and dis-
5 tribute information, including by electronic means, on the assistance
6 programs of Federal, State, and local governments, and of the private
7 sector, including information on office locations, key personnel, tele-
8 phone numbers, mail and electronic addresses, and contracting and
9 subcontracting opportunities;

10 (6) provision of internet or other distance learning academic instruc-
11 tion for veterans in business subjects, including accounting, marketing,
12 and business fundamentals; and

13 (7) compilation of a list of small business concerns owned and con-
14 trolled by service-disabled veterans that provide products or services
15 that could be procured by the United States, and delivery of the list
16 to each Federal agency.

17 (c) LIST OF SMALL BUSINESS CONCERNS.—The list described in sub-
18 section (b)(7)—

19 (1) shall be delivered in hard copy and electronic form; and

20 (2) shall include the name and address of each small business con-
21 cern owned and controlled by service-disabled veterans and the prod-
22 ucts or services that it provides.

23 **§ 275111. Dissemination of information**

24 Each fiscal year, the Secretary of Veterans Affairs shall—

25 (1) in consultation with the Assistant Secretary of Labor for Veter-
26 ans' Employment and Training and the Administrator, identify small
27 business concerns owned and controlled by veterans in the United
28 States; and

29 (2) inform each small business concern owned and controlled by vet-
30 erans identified under paragraph (1) that information on Federal pro-
31 curement is available from the Administrator, as provided in section
32 241115(b) of this title.

33 **§ 275112. Memorandum of understanding with the Secretary**
34 **of Labor and the Secretary of Veterans Affairs**

35 (a) IN GENERAL.—The Secretary of Labor, the Secretary of Veterans Af-
36 fairs, and the Administrator shall enter into a memorandum of understand-
37 ing to provide for coordination of vocational rehabilitation services, technical
38 and managerial assistance, and financial assistance to veterans (including
39 service-disabled veterans) seeking to employ themselves by forming or ex-
40 panding small business concerns.

1 (b) CONTENTS.—The memorandum of understanding shall include recom-
2 mendations for expanding existing programs or establishing new programs
3 to provide services described in subsection (a) or assistance to veterans (in-
4 cluding service-disabled veterans).

5 **§ 275113. Data collection**

6 The Federal Procurement Data System described in section
7 1122(a)(4)(A) of title 41 shall collect data regarding the percentage and
8 dollar value of prime contracts and subcontracts awarded to small business
9 concerns owned and controlled by veterans (including small business con-
10 cerns owned and controlled by service-disabled veterans).

11 **§ 275114. Relief from time limitations**

12 (a) IN GENERAL.—Any time limitation on any qualification, certification,
13 or period of participation imposed under this subtitle or subtitle I on any
14 program that is available to small business concerns shall be extended for
15 a small business concern that—

16 (1) is owned and controlled by—

17 (A) a veteran who was called or ordered to active duty on or
18 after September 11, 2001, under a provision of law specified in
19 section 101(a)(13)(B) of title 10; or

20 (B) a service-disabled veteran who became such a veteran due
21 to an injury or illness incurred or aggravated in the active mili-
22 tary, naval, or air service during a period of active duty pursuant
23 to a call or order to active duty on or after September 11, 2001,
24 under a provision of law specified in section 101(a)(13)(B) of title
25 10; and

26 (2) was subject to the time limitation during that period of active
27 duty.

28 (b) DURATION.—On submission of proper documentation to the Adminis-
29 trator, the extension of a time limitation under subsection (a) shall be equal
30 to the period of time that the veteran who owned or controlled a small busi-
31 ness concern was on active duty as described in subsection (a).

32 (c) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM
33 ACT OF 1990.—Subsections (a) and (b) do not apply to any program subject
34 to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

35 **Division M—International Trade**
36 **Chapter 277—International Trade**

Sec.

- 277101. Definitions.
- 277102. Trade distribution network.
- 277103. Promotion of sales opportunities.
- 277104. Export financing programs.
- 277105. Trade remedies.
- 277106. Discharge of international trade responsibilities.
- 277107. Export and trade counseling.

277108. Performance measures.
277109. Export assistance centers.
277110. State trade and export program.

1 **§ 277101. Definitions**

2 In this chapter:

3 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-
4 trator” means the Associate Administrator for International Trade.

5 (2) OFFICE.—The term “Office” means the Office of International
6 Trade established under section 103109 of this title.

7 (3) RURAL SMALL BUSINESS CONCERN.—The term “rural small
8 business concern” means a small business concern located in a rural
9 area (as defined in section 1393(a)(2) of the Internal Revenue Code
10 of 1986 (26 U.S.C. 1393(a)(2)).

11 **§ 277102. Trade distribution network**

12 The Associate Administrator, working in close cooperation with the Sec-
13 retary of Commerce, the United States Trade Representative, the Secretary
14 of Agriculture, the Secretary of State, the President of the Export-Import
15 Bank of the United States, the President of the Overseas Private Invest-
16 ment Corporation, the Director of the United States Trade and Develop-
17 ment Agency, and other Federal agencies, small business development cen-
18 ters engaged in export promotion efforts, export assistance centers, SBA re-
19 gional offices, SBA district offices, the small business community, and State
20 and local export promotion programs, shall—

21 (1) maintain a distribution network, using SBA regional offices and
22 SBA district offices, the small business development center network,
23 networks of women’s business centers, SCORE, and export assistance
24 centers, for programs relating to—

25 (A) trade promotion;

26 (B) trade finance;

27 (C) trade adjustment assistance;

28 (D) trade remedy assistance; and

29 (E) trade data collection;

30 (2) aggressively market the programs described in paragraph (1) and
31 disseminate information, including computerized marketing data, to
32 small business concerns on—

33 (A) exporting trends;

34 (B) market-specific growth;

35 (C) industry trends; and

36 (D) international prospects for exports;

37 (3) promote export assistance programs through the SBA district of-
38 fices and SBA regional offices, the small business development center
39 network, export assistance centers, the network of women’s business

1 centers, SCORE chapters, State and local export promotion programs,
2 and partners in the private sector; and

3 (4) give preference in hiring or approving the transfer of any em-
4 ployee into the Office or to a position described in section 277103(b)(9)
5 of this title to otherwise qualified applicants who are fluent in a lan-
6 guage in addition to English, to—

7 (A) accompany small business concerns on foreign trade mis-
8 sions; and

9 (B) translate documents, interpret conversations, and facilitate
10 multilingual transactions, including by providing referral lists for
11 translation services, if required.

12 **§ 277103. Promotion of sales opportunities**

13 (a) IN GENERAL.—The Associate Administrator shall promote sales op-
14 portunities for small business goods and services abroad.

15 (b) ACTIVITIES.—To accomplish the objective stated in subsection (a), the
16 Associate Administrator shall—

17 (1) establish annual goals for the Office relating to—

18 (A) enhancing the exporting capability of small business con-
19 cerns;

20 (B) facilitating technology transfers;

21 (C) enhancing programs and services to assist small business
22 concerns to compete effectively and efficiently in foreign markets;

23 (D) increasing the ability of small business concerns to access
24 capital; and

25 (E) disseminating information concerning Federal, State, and
26 private programs and initiatives;

27 (2) in cooperation with the Department of Commerce, other Federal
28 agencies, regional and local SBA offices, the small business develop-
29 ment center network, and State programs, develop a mechanism for—

30 (A) identifying subsectors of the small business community with
31 strong export potential;

32 (B) identifying areas of demand in foreign markets;

33 (C) prescreening foreign buyers for commercial and credit pur-
34 poses; and

35 (D) assisting in increasing international marketing by dissemi-
36 nating relevant information regarding market leads, linking poten-
37 tial sellers and buyers, and catalyzing the formation of joint ven-
38 tures, where appropriate;

39 (3) in cooperation with the Department of Commerce, actively assist
40 small business concerns in forming and using export trading compa-

1 nies, export management companies and research and development
2 pools authorized under division I of subtitle II;

3 (4) work in conjunction with other Federal agencies, SBA regional
4 offices, SBA district offices, the small business development center net-
5 work, and the private sector to identify and publicize translation serv-
6 ices, including those available through colleges and universities partici-
7 pating in the small business development center program;

8 (5) work closely with the Department of Commerce and other rel-
9 evant Federal agencies to—

10 (A)(i) collect, analyze and periodically update relevant data re-
11 garding the small business share of United States exports and the
12 nature of State exports (including the production of Gross State
13 Product figures); and

14 (ii) disseminate those data to the public and to Congress;

15 (B) make recommendations to the Secretary of Commerce and
16 to Congress regarding revision of the North American Industry
17 Classification System codes to encompass industries currently
18 overlooked and to create North American Industry Classification
19 System codes for export trading companies and export manage-
20 ment companies;

21 (C) improve the utility and accessibility of existing export pro-
22 motion programs for small business concerns; and

23 (D) increase the accessibility of the Export Trading Company
24 contact facilitation service of the Department of Commerce;

25 (6) make available to the small business community information re-
26 garding conferences on exporting and international trade sponsored by
27 the public and private sectors;

28 (7) provide small business concerns with access to up to date and
29 complete export information by—

30 (A) making available, at SBA regional offices and SBA district
31 offices through cooperation with the Department of Commerce, ex-
32 port information, including the worldwide information and trade
33 system and world trade data reports;

34 (B) maintaining a list of financial institutions that finance ex-
35 port operations;

36 (C) maintaining a directory of all Federal, regional, State and
37 private sector programs that provide export information and as-
38 sistance to small business concerns; and

39 (D) preparing and publishing such reports as the Office deter-
40 mines to be necessary concerning market conditions, sources of fi-
41 nancing, export promotion programs, and other information per-

1 taining to the needs of exporting small business concerns so as to
2 ensure that the maximum information is made available to small
3 business concerns in a readily usable form;

4 (8) in cooperation with the Department of Commerce, encourage
5 greater participation by small business concerns in trade fairs, shows,
6 missions, and other domestic and overseas export development activities
7 of the Department of Commerce;

8 (9) facilitate decentralized delivery of export information and assist-
9 ance to small business concerns by assigning primary responsibility for
10 export development to 1 individual in each SBA district office and pro-
11 viding each SBA regional office with a full-time export development
12 specialist, who shall—

13 (A) assist small business concerns in obtaining export informa-
14 tion and assistance from other Federal agencies;

15 (B) maintain a directory of all programs that provide export in-
16 formation and assistance to small business concerns in the region;

17 (C) encourage financial institutions to develop and expand pro-
18 grams for export financing;

19 (D) provide advice to SBA personnel involved in making loans,
20 loan guarantees, and extensions and revolving lines of credit and
21 providing other forms of assistance to small business concerns en-
22 gaged in exporting;

23 (E) within 180 days after being appointed as an export develop-
24 ment specialist, participate in a training program designed by the
25 Administrator, in conjunction with the Department of Commerce
26 and other Federal agencies, to study export programs and to ex-
27 amine the needs of small business concerns for export information
28 and assistance;

29 (F) participate, jointly with employees of the Office, in an an-
30 nual training program that focuses on current small business
31 needs for exporting; and

32 (G) develop and conduct training programs for exporters and
33 lenders, in cooperation with the export assistance centers, the De-
34 partment of Commerce, the Department of Agriculture, small
35 business development centers, women's business centers, the Ex-
36 port-Import Bank of the United States, the Overseas Private In-
37 vestment Corporation, and other Federal agencies;

38 (10) make available on the SBA website the name and contact infor-
39 mation of each individual described in paragraph (9);

1 (11) carry out a nationwide marketing effort using technology, online
2 resources, training, and other strategies to promote exporting as a
3 business development opportunity for small business concerns;

4 (12) disseminate information to the small business community
5 through SBA regional offices and SBA district offices, the small busi-
6 ness development center network, export assistance centers, the net-
7 work of women's business centers, SCORE chapters, State and local
8 export promotion programs, and partners in the private sector regard-
9 ing exporting trends, market-specific growth, industry trends, and pros-
10 pects for exporting; and

11 (13) establish and carry out training programs for the staff of SBA
12 regional offices and SBA district offices and resource partners of SBA
13 on export promotion and the provision of assistance relating to exports.

14 **§ 277104. Export financing programs**

15 (a) IN GENERAL.—The Associate Administrator shall work in cooperation
16 with the Export-Import Bank of the United States, the Department of Com-
17 merce, other Federal agencies, and the States to develop a program through
18 which export specialists in SBA regional offices, regional and local loan offi-
19 cers, and small business development center personnel can facilitate the ac-
20 cess of small business concerns to—

21 (1) relevant export financing programs of the Export-Import Bank
22 of the United States; and

23 (2) export and pre-export financing programs available from the Ad-
24 ministrator and the private sector.

25 (b) TRADE FINANCE SPECIALISTS.—To accomplish the goal established
26 under subsection (a), the Associate Administrator shall—

27 (1) designate at least 1 individual within SBA as a trade finance
28 specialist to oversee international loan programs and assist SBA em-
29 ployees with trade finance issues; and

30 (2) work in cooperation with the Export-Import Bank of the United
31 States and the small business community, including small business
32 trade associations, to—

33 (A) aggressively market existing SBA export financing and pre-
34 export financing programs;

35 (B) identify financing available under various programs of the
36 Export-Import Bank of the United States, and aggressively mar-
37 ket those programs to small business concerns;

38 (C) assist in the development of financial intermediaries and fa-
39 cilitate the access of those intermediaries to existing financing pro-
40 grams;

1 (D) promote greater participation by private financial institu-
2 tions, particularly institutions already participating in loan pro-
3 grams under this subtitle, in export finance; and

4 (E) provide for the participation of appropriate SBA personnel
5 in training programs conducted by the Export-Import Bank of the
6 United States.

7 **§ 277105. Trade remedies**

8 The Associate Administrator shall—

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

13 (2) work with the Department of Commerce, the Office of the United
14 States Trade Representative, and the International Trade Commission
15 to increase access to trade remedy proceedings for small business con-
16 cerns.

17 **§ 277106. Discharge of international trade responsibilities**

18 The Administrator shall ensure that—

19 (1) the responsibilities of the Administrator regarding international
20 trade are carried out by the Associate Administrator;

21 (2) the Associate Administrator has sufficient resources to carry out
22 those responsibilities; and

23 (3) the Associate Administrator has direct supervision and control
24 over—

25 (A) the staff of the Office; and

26 (B) any SBA employee whose principal duty station is an export
27 assistance center, or any successor entity.

28 **§ 277107. Export and trade counseling**

29 (a) DEFINITIONS.—In this section:

30 (1) LEAD SMALL BUSINESS DEVELOPMENT CENTER.—The term
31 “lead small business development center” means a small business devel-
32 opment center that has received a grant from the Administrator.

33 (2) LEAD WOMEN’S BUSINESS CENTER.—The term “lead women’s
34 business center” means a women’s business center that has received a
35 grant from the Administrator.

36 (b) CERTIFICATION PROGRAM.—The Administrator shall establish an ex-
37 port and trade counseling certification program to certify employees of lead
38 small business development centers and lead women’s business centers in
39 providing export assistance to small business concerns.

40 (c) NUMBER OF CERTIFIED EMPLOYEES.—The Administrator shall en-
41 sure that the number of employees of each lead small business development

1 center who are certified in providing export assistance is not less than the
2 lesser of—

3 (1) 5; or

4 (2) 10 percent of the total number of employees of the lead small
5 business development center.

6 (d) REIMBURSEMENT FOR CERTIFICATION.—

7 (1) IN GENERAL.—Subject to the availability of appropriations, the
8 Administrator shall reimburse a lead small business development center
9 or a lead women’s business center for costs relating to the certification
10 of an employee of the lead small business center or lead women’s busi-
11 ness center in providing export assistance under the program estab-
12 lished under subsection (b).

13 (2) LIMITATION.—The total amount reimbursed by the Adminis-
14 trator under paragraph (1) shall not exceed \$350,000 in any fiscal
15 year.

16 **§ 277108. Performance measures**

17 (a) IN GENERAL.—The Associate Administrator shall develop perform-
18 ance measures for SBA to support export growth goals for the activities of
19 the Office under this chapter that include—

20 (1) the number of small business concerns that—

21 (A) receive assistance from the Administrator;

22 (B) had not exported goods or services before receiving the as-
23 sistance described in subparagraph (A); and

24 (C) export goods or services;

25 (2) the number of small business concerns receiving assistance from
26 the Administrator that export goods or services to a market outside the
27 United States into which the small business concern did not export be-
28 fore receiving the assistance;

29 (3) export revenues by small business concerns assisted by programs
30 of the Administrator;

31 (4) the number of small business concerns referred to an export as-
32 sistance center or a small business development center by the staff of
33 the Office;

34 (5) the number of small business concerns referred to SBA by an
35 export assistance center or a small business development center; and

36 (6) the number of small business concerns referred to the Depart-
37 ment of Commerce, the Department of Agriculture, the Department of
38 State, the Export-Import Bank of the United States, the Overseas Pri-
39 vate Investment Corporation, or the United States Trade and Develop-
40 ment Agency by the staff of the Office, an export assistance center, or
41 a small business development center.

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1 (b) JOINT PERFORMANCE MEASURES.—The Associate Administrator
2 shall develop joint performance measures for SBA district offices and export
3 assistance centers that include the number of export loans made under—

- 4 (1) section 205110 of this title;
5 (2) the export working capital program;
6 (3) the preferred lenders program; and
7 (4) the export express program.

8 (c) CONSISTENCY OF TRACKING.—The Associate Administrator, in co-
9 ordination with the Federal agencies that are represented on the Trade Pro-
10 motion Coordinating Committee established under section 2312 of the Ex-
11 port Enhancement Act of 1988 (15 U.S.C. 4727) and the small business
12 development center network, shall develop a system to track exports by
13 small business concerns, including information relating to the performance
14 measures developed under subsection (a), that is consistent with systems
15 used by the Federal agencies and the network.

16 **§ 277109. Export assistance centers**

17 (a) MINIMUM NUMBER OF EXPORT FINANCE SPECIALISTS.—

18 (1) IN GENERAL.—The Administrator, in coordination with the Sec-
19 retary of Commerce, shall ensure that the number of export finance
20 specialists at all times is not less than the number of employees as-
21 signed as export finance specialists on January 1, 2003.

22 (2) SBA REGIONS.—The Administrator, in coordination with the
23 Secretary of Commerce, shall ensure that at all times there are not
24 fewer than 3 export finance specialists in each SBA region.

25 (b) PLACEMENT OF EXPORT FINANCE SPECIALISTS.—

26 (1) PRIORITY.—The Administrator shall give priority, to the maxi-
27 mum extent practicable, to placing SBA employees at any export as-
28 sistance center that—

29 (A) had an SBA employee assigned to the export assistance cen-
30 ter before January 2003; and

31 (B) has not had an SBA employee assigned to the export assist-
32 ance center during the period beginning January 2003 and ending
33 on September 27, 2010, through either retirement or reassign-
34 ment.

35 (2) NEEDS OF EXPORTERS.—The Administrator shall, to the maxi-
36 mum extent practicable, strategically assign SBA employees to export
37 assistance centers based on the needs of exporters.

38 (3) RULE OF CONSTRUCTION.—Nothing in this section shall be con-
39 strued to require the Administrator to reassign or remove an export fi-
40 nance specialist who was assigned to an export assistance center on
41 September 27, 2010.

1 (c) GOALS.—The Associate Administrator shall work with the Depart-
2 ment of Commerce, the Export-Import Bank of the United States, and the
3 Overseas Private Investment Corporation to establish shared annual goals
4 for the export assistance centers.

5 (d) OVERSIGHT.—The Associate Administrator shall designate an individ-
6 ual within SBA to oversee all activities conducted by SBA employees as-
7 signed to export assistance centers.

8 **§ 277110. State trade and export program**

9 (a) DEFINITIONS.—In this section:

10 (1) ELIGIBLE SMALL BUSINESS CONCERN.—The term “eligible small
11 business concern” means a small business concern that—

12 (A) has been in business for not less than the 1-year period end-
13 ing on the date on which assistance is provided using a grant
14 under this section;

15 (B) is operating profitably, based on operations in the United
16 States;

17 (C) has demonstrated understanding of the costs associated
18 with exporting and doing business with foreign purchasers, includ-
19 ing the costs of freight forwarding, customs brokers, and packing
20 and shipping, as determined by the Associate Administrator; and

21 (D) has in effect a strategic plan for exporting.

22 (2) PROGRAM.—The term “program” means the State trade and ex-
23 port promotion grant program established under subsection (b).

24 (3) STATE.—The term “State” means a State, the District of Co-
25 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and
26 the Northern Mariana Islands.

27 (b) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall
28 establish a 3-year trade and export promotion pilot program to be known
29 as the State trade and export promotion grant program, to make grants to
30 States to carry out export programs that assist eligible small business con-
31 cerns in—

32 (1) participation in a foreign trade mission;

33 (2) a foreign market sales trip;

34 (3) a subscription to services provided by the Secretary of Com-
35 merce;

36 (4) the payment of website translation fees;

37 (5) the design of international marketing media;

38 (6) a trade show exhibition;

39 (7) participation in training workshops; or

40 (8) any other export initiative that the Associate Administrator de-
41 termines to be appropriate.

1 (c) GRANTS.—

2 (1) JOINT REVIEW.—In carrying out the program, the Associate Ad-
3 ministrator may make a grant to a State to increase the number of
4 eligible small business concerns in the State that export or to increase
5 the value of the exports by eligible small business concerns in the State.

6 (2) CONSIDERATIONS.—In making grants under this section, the As-
7 sociate Administrator may give priority to an application by a State
8 that proposes a program that—

9 (A) focuses on eligible small business concerns as part of an ex-
10 port promotion program;

11 (B) demonstrates success in promoting exports by—

12 (i) small business concerns owned and controlled by socially
13 and economically disadvantaged individuals;

14 (ii) small business concerns owned or controlled by women;
15 and

16 (iii) rural small business concerns;

17 (C) promotes exports from a State that is not 1 of the 10
18 States with the highest percentage of exporters that are small
19 business concerns, based on the latest data available from the Sec-
20 retary of Commerce; and

21 (D) promotes new-to-market export opportunities to the Peo-
22 ple's Republic of China for eligible small business concerns in the
23 United States.

24 (3) LIMITATIONS.—

25 (A) SINGLE APPLICATION.—A State may not submit more than
26 1 application for a grant under the program in any fiscal year.

27 (B) PROPORTION OF AMOUNTS.—The total value of grants
28 under the program made during a fiscal year to the 10 States with
29 the highest number of exporters that are small business concerns,
30 based on the latest data available from the Secretary of Com-
31 merce, shall be not more than 40 percent of the amounts appro-
32 priated for the program for that fiscal year.

33 (4) APPLICATION.—A State desiring a grant under the program
34 shall submit an application at such time, in such manner, and accom-
35 panied by such information as the Associate Administrator may estab-
36 lish.

37 (d) COMPETITIVE BASIS.—The Associate Administrator shall award
38 grants under the program on a competitive basis.

39 (e) FEDERAL SHARE.—The Federal share of the cost of an export pro-
40 gram carried out using a grant under the program shall be—

1 (1) for a State that has a high export volume, as determined by the
2 Associate Administrator, not more than 65 percent; and

3 (2) for a State that does not have a high export volume, as deter-
4 mined by the Associate Administrator, not more than 75 percent.

5 (f) NON-FEDERAL SHARE.—The non-Federal share of the cost of an ex-
6 port program carried using a grant under the program shall be comprised
7 of not less than 50 percent cash and not more than 50 percent of indirect
8 costs and in-kind contributions, except that no such costs or contributions
9 may be derived from funds from any other Federal program.

10 (g) ANNUAL REPORTS.—The Associate Administrator shall annually sub-
11 mit to the Committee on Small Business and Entrepreneurship of the Sen-
12 ate and the Committee on Small Business of the House of Representatives
13 a report regarding the program that includes—

14 (1) the number and amount of grants made under the program dur-
15 ing the preceding year;

16 (2) a list of the States that received a grant under the program dur-
17 ing the preceding year, including the activities being performed with
18 the grant funds; and

19 (3) the effect of each grant on exports by eligible small business con-
20 cerns in each State that received a grant.

21 (h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-
22 propriated to carry out the program \$30,000,000 for each of fiscal years
23 2011, 2012, and 2013.

24 (i) TERMINATION.—The authority to carry out the program shall termi-
25 nate 3 years after the date on which the Associate Administrator establishes
26 the program.

27 Divisions N Through Y—Reserved

28 Division Z—Miscellaneous

29 Chapter 299—Miscellaneous

Sec.

299101. Management assistance for small business concerns affected by military operations.

299102. Business grants and cooperative agreements.

299103. Voluntary agreements and programs.

299104. Paul D. Coverdell drug-free workplace program.

299105. Course on contracting requirements.

299106. Mentor-protégé programs.

299107. Subcontracting requirements and limitations.

30 § 299101. Management assistance for small business con- 31 cerns affected by military operations

32 (a) DEFINITION OF PERIOD OF MILITARY CONFLICT.—In this section,
33 the term “period of military conflict” means—

34 (1) a period of war declared by Congress;

1 (2) a period of national emergency declared by Congress or by the
2 President; or

3 (3) a period of a contingency operation (as defined in section 101(a)
4 of title 10).

5 (b) ASSISTANCE.—The Administrator shall use, as appropriate, the entre-
6 preneurial development and management assistance programs of SBA, in-
7 cluding programs involving State or private sector partners, to provide busi-
8 ness counseling and training to any small business concern adversely af-
9 fected by the deployment of units of the Armed Forces of the United States
10 in support of a period of military conflict.

11 **§ 299102. Business grants and cooperative agreements**

12 (a) IN GENERAL.—The Administrator may make grants to and enter into
13 cooperative agreements with a coalition of private or public entities (or com-
14 bination of private and public entities)—

15 (1) to expand business-to-business relationships between small busi-
16 ness concerns and large business concerns; and

17 (2) to provide businesses, directly or indirectly, with online informa-
18 tion and a database of companies that are interested in mentor-protégé
19 programs or community-based, statewide, or local business development
20 programs.

21 (b) MATCHING REQUIREMENT.—The Administrator may make a grant to
22 a coalition of private entities under subsection (a) only if the coalition pro-
23 vides for activities described in paragraph (1) or (2) of subsection (a) in
24 an amount (in kind or in cash) equal to the grant amount.

25 **§ 299103. Voluntary agreements and programs**

26 (a) CONSULTATION.—The President may consult with representatives of
27 small business concerns with a view to encouraging the making by small
28 business concerns with the approval of the President of voluntary agree-
29 ments and programs to further the objectives of this subtitle.

30 (b) EXEMPTION FROM CERTAIN LAWS.—

31 (1) IN GENERAL.—No act or omission to act pursuant to this sub-
32 title that occurs while this subtitle is in effect, if requested by the
33 President pursuant to a voluntary agreement or program approved
34 under subsection (a) and determined by the President to be in the pub-
35 lic interest as contributing to the national defense, shall be construed
36 to be within the prohibitions of the antitrust laws or the Federal Trade
37 Commission Act (15 U.S.C. 41 et seq.).

38 (2) REQUESTS.—A copy of a request intended to be within the cov-
39 erage of this section, and any modification or withdrawal of such a re-
40 quest—

1 (A) shall be furnished to the Attorney General and the Chair-
2 man of the Federal Trade Commission when made; and

3 (B) shall be published in the Federal Register unless publication
4 of the request would, in the opinion of the President, endanger the
5 national security.

6 (c) DELEGATION OF AUTHORITY.—The authority granted in subsection
7 (b) shall be delegated only—

8 (1) to an official who for the purpose of the delegation shall be re-
9 quired to be appointed by the President by and with the advice and
10 consent of the Senate;

11 (2) on the condition that the official consult with the Attorney Gen-
12 eral and the Chairman of the Federal Trade Commission not less than
13 10 days before making any request or finding under subsection (b);
14 and

15 (3) on the condition that the official obtain the approval of the At-
16 torney General to any request under subsection (b) before making the
17 request.

18 (d) WITHDRAWAL OF REQUEST OR FINDING BY THE PRESIDENT OR OF
19 APPROVAL BY THE ATTORNEY GENERAL.—On withdrawal of any request
20 or finding under this section, or on withdrawal by the Attorney General of
21 approval of the voluntary agreement or program on which the request or
22 finding is based, this section shall not apply to any subsequent act, or omis-
23 sion to act, by reason of the finding or request.

24 **§ 299104. Paul D. Coverdell drug-free workplace program**

25 (a) DEFINITIONS.—In this section:

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

28 (A) a written policy, including a clear statement of—

29 (i) expectations for workplace behavior;

30 (ii) prohibitions against reporting to work or working under
31 the influence of illegal drugs or alcohol;

32 (iii) prohibitions against the use or possession of illegal
33 drugs in the workplace; and

34 (iv) the consequences of violating those expectations and
35 prohibitions;

36 (B)(i) drug and alcohol abuse prevention training for a total of
37 not less than 2 hours for each employee; and

38 (ii) additional voluntary drug and alcohol abuse prevention
39 training for employees who are parents;

40 (C)(i) testing of employees of a small business concern for ille-
41 gal drugs, with analysis conducted by a drug testing laboratory

1 certified by the Substance Abuse and Mental Health Services Ad-
2 ministration, or approved by the College of American Pathologists
3 for forensic drug testing; and

4 (ii) a review of each positive test result by a medical review offi-
5 cer who is not—

6 (I) an employee of that small business concern; or

7 (II) an employee or agent of, or any person having a finan-
8 cial interest in, the laboratory for which the illegal drug test
9 results are reviewed;

10 (D) employee access to an employee assistance program, includ-
11 ing confidential assessment, referral, and short-term problem reso-
12 lution; and

13 (E) continuing alcohol and drug abuse prevention education.

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

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

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

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

21 (D)(i) the purpose of which is—

22 (I) to develop comprehensive drug-free workplace programs
23 or to supply drug-free workplace services; or

24 (II) to provide other forms of assistance and services to
25 small business concerns; or

26 (ii) that is eligible to receive a grant under chapter 2 of the Na-
27 tional Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).

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

29 (A) an applicant for employment;

30 (B) an employee;

31 (C) a supervisor;

32 (D) a manager;

33 (E) an officer of a small business concern who is active in man-
34 agement of the small business concern; and

35 (F) an owner of a small business concern who is active in man-
36 agement of the small business concern.

37 (4) MEDICAL REVIEW OFFICER.—The term “medical review officer”
38 means a licensed physician with knowledge of substance abuse dis-
39 orders.

40 (b) ESTABLISHMENT.—

1 (1) IN GENERAL.—There is established a drug-free workplace dem-
2 onstration program, under which the Administrator may make grants
3 to, or enter into cooperative agreements or contracts with, eligible
4 intermediaries for the purpose of providing financial and technical as-
5 sistance to small business concerns seeking to establish a drug-free
6 workplace program.

7 (2) ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—In addition
8 to grants under paragraph (1), the Administrator may make grants to,
9 or enter into cooperative agreements or contracts with, any grantee for
10 the purpose of providing, in cooperation with 1 or more small business
11 development centers, technical assistance to small business concerns
12 seeking to establish a drug-free workplace program.

13 (3) 2-YEAR GRANTS.—A grant made under this subsection shall be
14 for a period of 2 years, subject to an annual performance review by
15 the Administrator.

16 (e) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTER-
17 MEDIARIES.—

18 (1) TECHNICAL ASSISTANCE AND INFORMATION.—The Adminis-
19 trator, after consultation with the Director of the Center for Substance
20 Abuse and Prevention, shall provide technical assistance and informa-
21 tion to each eligible intermediary under subsection (b) regarding the
22 most effective practices in establishing and carrying out drug-free
23 workplace programs.

24 (2) EVALUATION OF PROGRAM.—

25 (A) DATA COLLECTION AND ANALYSIS.—

26 (i) IN GENERAL.—An eligible intermediary receiving a
27 grant under this section shall establish a system to collect
28 and analyze information regarding the effectiveness of drug-
29 free workplace programs established with assistance provided
30 under this section through the intermediary, including infor-
31 mation regarding any increase or decrease among employees
32 in drug use, awareness of the adverse consequences of drug
33 use, and absenteeism, injury, and disciplinary problems relat-
34 ed to drug use.

35 (ii) REQUIREMENTS.—The system shall conform to such
36 requirements as the Administrator, after consultation with
37 the Director of the Center for Substance Abuse and Preven-
38 tion, may prescribe.

39 (iii) LIMITATION.—Not more than 5 percent of the amount
40 of a grant made under subsection (b) shall be used by the eli-
41 gible intermediary to carry out this paragraph.

1 (B) METHOD OF EVALUATION.—

2 (i) IN GENERAL.—The Administrator, after consultation
3 with the Director of the Center for Substance Abuse and Pre-
4 vention, shall provide technical assistance and guidance to
5 each eligible intermediary receiving a grant under subsection
6 (b) regarding the collection and analysis of information to
7 evaluate the effectiveness of drug-free workplace programs es-
8 tablished with assistance provided under this section, includ-
9 ing the information referred to in paragraph (1).

10 (ii) FORMS OF ASSISTANCE.—Assistance under clause (i)
11 shall include—

12 (I) the identification of additional information suitable
13 for measuring the benefits of drug-free workplace pro-
14 grams to the small business concern and to the small
15 business concern's employees; and

16 (II) the identification of methods suitable for analyz-
17 ing such information.

18 (d) CONTRACT AUTHORITY.—In carrying out this section, the Adminis-
19 trator may—

20 (1) contract with public and private entities to provide assistance re-
21 lated to carrying out the program under this section; and

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

23 (e) EFFECT OF SECTION.—Nothing in this section requires an employer
24 that attends a program offered by an eligible intermediary to contract for
25 any service offered by the eligible intermediary.

26 **§ 299105. Course on contracting requirements**

27 (a) IN GENERAL.—The Defense Acquisition University and the Federal
28 Acquisition Institute shall each provide a course on contracting require-
29 ments under this subtitle, including the requirements for—

30 (1) qualified HUBZone small business concerns;

31 (2) small business concerns owned and controlled by service-disabled
32 veterans;

33 (3) small business concerns owned and controlled by socially and eco-
34 nomically disadvantaged individuals; and

35 (4) small business concerns owned and controlled by women.

36 (b) COURSE REQUIREMENT FOR CERTIFICATION.—To have a Federal Ac-
37 quisition Certification in Contracting (or any successor certification) or the
38 equivalent Department of Defense certification, an individual shall be re-
39 quired to complete the course under subsection (a).

40 **§ 299106. Mentor-protégé programs**

41 (a) DEFINITIONS.—In this section:

1 (1) MENTOR.—The term “mentor” means a for-profit business con-
2 cern, of any size, that—

3 (A) has the ability to assist and commits to assisting a protégé
4 to compete for Federal prime contracts and subcontracts; and

5 (B) satisfies any other requirements established by the Adminis-
6 trator.

7 (2) MENTOR-PROTÉGÉ PROGRAM.—The term “mentor-protégé pro-
8 gram” means a program that pairs a mentor with a protégé for the
9 purpose of assisting the protégé to compete for Federal prime contracts
10 and subcontracts.

11 (3) PROTÉGÉ.—The term “protégé” means a small business concern
12 that—

13 (A) is eligible to enter into Federal prime contracts and sub-
14 contracts; and

15 (B) satisfies any other requirements established by the Adminis-
16 trator.

17 (b) SBA PROGRAM.—

18 (1) IN GENERAL.—The Administrator may establish a mentor-
19 protégé program for all small business concerns.

20 (2) MODEL FOR PROGRAM.—The mentor-protégé program estab-
21 lished under paragraph (1) shall be identical to the SBA mentor-
22 protégé program for small business concerns that participate in the
23 business development program (as in effect on January 2, 2013), ex-
24 cept that the Administrator may modify the program to the extent nec-
25 essary given the categories of small business concern included as
26 protégés.

27 (c) PROGRAMS OF OTHER FEDERAL AGENCIES.—

28 (1) APPROVAL.—Except as provided in paragraph (4), a Federal
29 agency may not carry out a mentor-protégé program for small business
30 concerns unless—

31 (A) the head of the Federal agency submits to the Adminis-
32 trator a plan for the program; and

33 (B) the Administrator approves the plan.

34 (2) BASIS FOR APPROVAL.—The Administrator shall approve or dis-
35 approve a plan submitted under paragraph (1) based on whether the
36 proposed program—

37 (A) will assist protégés to compete for Federal prime contracts
38 and subcontracts; and

39 (B) complies with the regulations prescribed under paragraph
40 (3).

1 (3) REGULATIONS.—The Administrator shall prescribe, after provid-
2 ing notice and an opportunity for public comment, regulations with re-
3 spect to mentor-protégé programs, that—

4 (A) ensure that the programs improve the ability of protégés to
5 compete for Federal prime contracts and subcontracts; and

6 (B) address, at a minimum—

7 (i) eligibility criteria for program participants, including
8 any restrictions on the number of mentor-protégé relation-
9 ships permitted for each participant;

10 (ii) the types of developmental assistance to be provided by
11 mentors, including how the assistance provided shall improve
12 the competitive viability of the protégés;

13 (iii) whether any developmental assistance provided by a
14 mentor may affect the status of a program participant as a
15 small business concern due to affiliation;

16 (iv) the length of mentor-protégé relationships;

17 (v) the effect of mentor-protégé relationships on contract-
18 ing;

19 (vi) benefits that may accrue to a mentor as a result of
20 program participation;

21 (vii) reporting requirements during program participation;

22 (viii) postparticipation reporting requirements;

23 (ix) the need for a mentor-protégé pair, if accepted to par-
24 ticipate as a pair in a mentor-protégé program of any Federal
25 agency, to be accepted to participate as a pair in all Federal
26 agency mentor-protégé programs; and

27 (x) actions to be taken to ensure benefits for protégés and
28 to protect a protégé against actions by a mentor that—

29 (I) may adversely affect the protégé's status as a
30 small business concern; or

31 (II) provide disproportionate economic benefits to the
32 mentor relative to those provided the protégé.

33 (4) LIMITATION ON APPLICABILITY.—Paragraph (1) does not apply
34 to—

35 (A) a mentor-protégé program of the Department of Defense;

36 (B) mentoring assistance provided under an SBIR program or
37 a STTR program; or

38 (C) until the date that is 1 year after the date on which the
39 Administrator prescribes regulations under paragraph (3), a Fed-
40 eral agency operating a mentor-protégé program in effect on Janu-
41 ary 2, 2013.

1 **§ 299107. Subcontracting requirements and limitations**

2 (a) DEFINITIONS.—In this section:

3 (1) COVERED SMALL BUSINESS CONCERN.—The term “covered small
4 business concern” means a business concern that—

5 (A) with respect to a contract awarded under the business devel-
6 opment program, is a small business concern eligible to receive
7 contracts under the business development program;

8 (B) with respect to a contract awarded under chapter 257—

9 (i) is a small business concern owned and controlled by
10 women (as defined in section 257101 of this title); or

11 (ii) is a small business concern owned and controlled by
12 women (as defined in that section) that is not less than 51
13 percent owned by 1 or more women who are economically dis-
14 advantaged (and such ownership is determined without regard
15 to any community property law);

16 (C) with respect to a contract awarded under section 251101
17 of this title, is a small business concern;

18 (D) with respect to a contract awarded under the HUBZone
19 program, is a qualified HUBZone small business concern; and

20 (E) with respect to a contract awarded under chapter 255, is
21 a small business concern owned and controlled by service-disabled
22 veterans.

23 (2) SIMILARLY SITUATED ENTITY.—The term “similarly situated en-
24 tity” means a subcontractor that—

25 (A)(i) is a subcontractor for a small business concern; and

26 (ii) is a small business concern;

27 (B)(i) is a subcontractor for a small business concern eligible
28 to receive contracts under the business development program; and

29 (ii) is a small business concern eligible to receive contracts
30 under the business development program;

31 (C)(i) is a subcontractor for a small business concern owned
32 and controlled by women (as defined in section 257101 of this
33 title); and

34 (ii) is a small business concern owned and controlled by women
35 (as defined in that section);

36 (D)(i) is a subcontractor for a small business concern owned
37 and controlled by women (as defined in 257101 of this title) that
38 is not less than 51 percent owned by 1 or more women who are
39 economically disadvantaged (and such ownership is determined
40 without regard to any community property law);

1 (ii) is small business concern owned and controlled by women
2 (as defined in that section) that is not less than 51 percent owned
3 by 1 or more women who are economically disadvantaged (and
4 such ownership is determined without regard to any community
5 property law);

6 (E)(i) is a subcontractor for a qualified HUBZone small busi-
7 ness concern; and

8 (ii) is a qualified HUBZone small business concern; or

9 (F)(i) is a subcontractor for a small business concern owned
10 and controlled by service-disabled veterans; and

11 (ii) is a small business concern owned and controlled by service-
12 disabled veterans.

13 (b) IN GENERAL.—If awarded a contract under the business development
14 program, chapter 257, 251101 of this title, the HUBZone program, or
15 chapter 255, a covered small business concern—

16 (1) in the case of a contract for services, shall not expend on sub-
17 contractors more than 50 percent of the amount paid to the covered
18 small business concern under the contract;

19 (2) in the case of a contract for supplies (other than from a regular
20 dealer in the supplies), shall not expend on subcontractors more than
21 50 percent of the amount, less the cost of materials, paid to the cov-
22 ered small business concern under the contract;

23 (3) in the case of a contract for services and supplies (other than
24 from a regular dealer in the supplies)—

25 (A) shall determine for which category, services (as described in
26 paragraph (1)) or supplies (as described in paragraph (2)), the
27 greater percentage of the contract is awarded;

28 (B) shall determine the amount awarded under the contract for
29 that category of services or supplies; and

30 (C) shall not expend on subcontractors, with respect to the
31 amount determined under subparagraph (B), more than 50 per-
32 cent of that amount; and

33 (4) in the case of a contract for supplies from a regular dealer in
34 the supplies, shall supply the product of a domestic manufacturer or
35 processor that is a small business concern, unless a waiver of the re-
36 quirement to supply the product of a domestic manufacturer or proc-
37 essor that is a small business concern is granted—

38 (A) by the Administrator, after reviewing a determination by
39 the applicable contracting officer that no manufacturer or proc-
40 essor that is a small business concern can reasonably be expected

1 to offer a product meeting the specifications (including period for
2 performance) required by the contract; or

3 (B) by the Administrator for a product (or class of products),
4 after determining that no manufacturer or processor that is a
5 small business concern is available to participate in the Federal
6 procurement market.

7 (e) SIMILARLY SITUATED ENTITIES.—Contract amounts expended by a
8 covered small business concern on a subcontractor that is a similarly situ-
9 ated entity shall not be considered to be subcontracted for purposes of de-
10 termining whether a covered small business concern failed to comply with
11 a requirement or limitation under subsection (b) or (e).

12 (d) MODIFICATIONS OF PERCENTAGES.—The Administrator may change,
13 by rule (after providing notice and an opportunity for public comment), a
14 percentage specified in paragraph (1), (2), or (3)(C) of subsection (b) if the
15 Administrator determines that the change is necessary to reflect conven-
16 tional industry practices among business concerns that are below the numer-
17 ical size standard for businesses in that industry category.

18 (e) OTHER CONTRACTS.—

19 (1) IN GENERAL.—With respect to a category of contracts to which
20 a requirement under subsection (b) does not apply, the Administrator
21 may establish, by rule (after providing notice and an opportunity for
22 public comment), a requirement that a covered small business concern
23 shall not expend on subcontractors more than a specified percentage of
24 the amount paid to the covered small business concern under a contract
25 in that category.

26 (2) UNIFORMITY.—A requirement established under paragraph (1)
27 shall apply to all covered small business concerns.

28 (3) CONSTRUCTION PROJECTS.—The Administrator shall establish,
29 through public rulemaking, requirements similar to those specified in
30 paragraph (1) to be applicable to contracts for general and specialty
31 construction and to contracts for any other industry category not
32 otherwise subject to the requirements of that paragraph. The percent-
33 age applicable to any such requirement shall be determined in accord-
34 ance with paragraph (1).

35 (f) MONITORING.—The Administrator shall take such actions as are nec-
36 essary to ensure that a Federal subcontracting reporting system in existence
37 on January 2, 2013, is modified to notify the Administrator, the appro-
38 priate Director of the Office of Small and Disadvantaged Business Utiliza-
39 tion, and the appropriate contracting officer of a failure to comply with a
40 requirement or limitation under subsection (b) or (e).

1 **Subtitle III—Investment Division**
2 **Division A—General Provisions**
3 **Chapter 301—General Provisions**

Sec.

301101. Definitions.

301102. Implementation of subtitle.

4 **§ 301101. Definitions**

5 In this subtitle:

6 (1) **3D PARTY DEBT.**—The term “3d party debt” means any indebt-
7 edness for borrowed money, other than indebtedness owed to the Ad-
8 ministrator.

9 (2) **ARTICLES.**—The term “articles”—

10 (A) with respect to an incorporated body, means the articles of
11 incorporation of the incorporated body; and

12 (B) with respect to any other business entity, means the func-
13 tional equivalent of the articles of incorporation of an incorporated
14 body or other similar document specified by the Administrator.

15 (3) **EMPLOYEE WELFARE BENEFIT PLAN.**—

16 (A) **IN GENERAL.**—The term “employee welfare benefit plan”
17 has the meaning given the term in section 3 of the Employee Re-
18 tirement Income Security Act of 1974 (29 U.S.C. 1002).

19 (B) **INCLUSIONS.**—The term “employee welfare benefit plan”
20 includes any similar plan not covered by the Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. 1001 et seq.) that has
22 been established and that is maintained by the Federal Govern-
23 ment or any State or political subdivision, or any agency or instru-
24 mentality thereof, for the benefit of employees.

25 (4) **ENERGY SAVING DEBENTURE.**—The term “energy saving deben-
26 ture” means a deferred interest debenture that—

27 (A) is issued at a discount;

28 (B) has a 5-year maturity or a 10-year maturity;

29 (C) requires no interest payment or annual charge for the 1st
30 5 years;

31 (D) is restricted to energy saving qualified investments; and

32 (E) is issued at no cost (as defined in section 502 of the Credit
33 Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing
34 and guaranteeing the debenture.

35 (5) **ENERGY SAVING QUALIFIED INVESTMENT.**—The term “energy
36 saving qualified investment” means an investment in a small business
37 concern that is primarily engaged in researching, manufacturing, devel-

1 oping, or providing products, goods, or services that reduce the use or
2 consumption of nonrenewable energy resources.

3 (6) LEVERAGE.—The term “leverage” includes—

4 (A) a debenture purchased or guaranteed by the Administrator;

5 (B) a participating security purchased or guaranteed by the Ad-
6 ministrators; and

7 (C) a preferred security outstanding as of October 1, 1995.

8 (7) LICENSE.—The term “license” means a license to operate as a
9 small business investment company issued by the Administrator to a
10 company under section 303102 of this title.

11 (8) LICENSEE.—

12 (A) IN GENERAL.—The term “licensee” means a company that
13 is issued a license.

14 (B) INCLUSION.—The term “licensee” includes a specialized
15 small business investment company.

16 (9) LIMITED LIABILITY COMPANY.—The term “limited liability com-
17 pany” means a business entity that is organized and operating in ac-
18 cordance with a State limited liability company statute approved by the
19 Administrator.

20 (10) LONG-TERM.—The term “long-term”, used in connection with
21 equity capital or loan funds invested in a small business concern or
22 smaller enterprise, means a period of time of not less than 1 year.

23 (11) LOW-INCOME GEOGRAPHIC AREA.—The term “low-income geo-
24 graphic area” means—

25 (A) a population census tract (or in the case of an area that
26 is not tracted for population census tracts, the equivalent county
27 division, as defined by the Bureau of the Census of the Depart-
28 ment of Commerce for purposes of defining poverty areas), if—

29 (i) the poverty rate for the population census tract is not
30 less than 20 percent;

31 (ii)(I) in the case of a population census tract that is lo-
32 cated within a metropolitan area, 50 percent or more of the
33 households in the population census tract have an income
34 equal to less than 60 percent of the area median gross in-
35 come; or

36 (II) in the case of a population census tract that is not lo-
37 cated within a metropolitan area, the median household in-
38 come for the census tract does not exceed 80 percent of the
39 statewide median household income; or

40 (iii) as determined by the Administrator based on objective
41 criteria, a substantial population of low-income individuals re-

1 side, an inadequate access to investment capital exists, or
2 other indications of economic distress exist in the population
3 census tract; or

4 (B) an area located within—

5 (i) a HUBZone;

6 (ii) an urban empowerment zone or urban enterprise com-
7 munity (as designated by the Secretary of Housing and
8 Urban Development); or

9 (iii) a rural empowerment zone or rural enterprise commu-
10 nity (as designated by the Secretary of Agriculture).

11 (12) MANAGEMENT OFFICIAL.—The term “management official”
12 means an officer, director, general partner, manager, employee, agent,
13 or other participant in the management or conduct of the affairs of a
14 licensee.

15 (13) MEMBER.—The term “member”, with respect to a licensee that
16 is a limited liability company, means—

17 (A) a holder of an ownership interest in the limited liability
18 company; or

19 (B) a person otherwise admitted to membership in the limited
20 liability company.

21 (14) PARTICIPATING SECURITY.—The term “participating security”
22 includes—

23 (A) preferred stock, a preferred limited partnership interest, or
24 a similar instrument; and

25 (B) a debenture under the terms of which interest is payable
26 only to the extent of earnings.

27 (15) PENSION PLAN.—

28 (A) IN GENERAL.—The term “pension plan” has the meaning
29 given the term in section 3 of the Employee Retirement Income
30 Security Act of 1974 (29 U.S.C. 1002).

31 (B) INCLUSIONS.—The term “pension plan” includes—

32 (i) a public or private pension or retirement plan subject
33 to the Employee Retirement Income Security Act of 1974 (29
34 U.S.C. 1001 et seq.); and

35 (ii) any similar plan not covered by that Act that is estab-
36 lished and maintained by the Federal Government or any
37 State or political subdivision, or any agency or instrumentality
38 thereof, for the benefit of employees.

39 (16) PRIVATE CAPITAL.—

40 (A) IN GENERAL.—The term “private capital” means the sum
41 of—

1 (i)(I) the paid-in capital and paid-in surplus of a corporate
2 licensee;

3 (II) the contributed capital of the partners of a partnership
4 licensee; or

5 (III) the equity investment of the members of a limited li-
6 ability company licensee; and

7 (ii) subject to subparagraph (B), unfunded binding com-
8 mitments, from investors that meet criteria established by the
9 Administrator, to contribute capital to the licensee.

10 (B) LIMITATION.—An unfunded commitment described in sub-
11 paragraph (A)(ii) may be counted as private capital for purposes
12 of approval by the Administrator of a request for leverage, but le-
13 verage shall not be funded based on such a commitment.

14 (C) EXCLUSIONS.—The term “private capital” does not in-
15 clude—

16 (i) funds borrowed by a licensee from any source;

17 (ii) funds obtained through the issuance of leverage; or

18 (iii) funds obtained directly or indirectly from a Federal,
19 State, or local government, or any government agency or in-
20 strumentality, except for—

21 (I) funds obtained from the business revenues (exclud-
22 ing any governmental appropriation) of a federally char-
23 tered or government-sponsored corporation established
24 before October 1, 1987;

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

27 (III) qualified nonprivate funds (if the investors of the
28 qualified nonprivate funds do not control, directly or in-
29 directly, the management, board of directors, general
30 partners, or members of the licensee).

31 (17) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term
32 “qualified HUBZone small business concern” has the meaning given
33 the term in section 101102 of this title, except that the exception stat-
34 ed in paragraph (19)(B) of this section applies.

35 (18) QUALIFIED NONPRIVATE FUNDS.—The term “qualified nonpri-
36 vate funds” means—

37 (A) funds directly or indirectly invested in an applicant or li-
38 censee on or before August 16, 1982, by any Federal agency,
39 other than SBA, under a provision of law that explicitly requires
40 the inclusion of such funds in the definition of the term “private
41 capital”;

1 (B) funds directly or indirectly invested in an applicant or li-
2 censee by a Federal agency under a provision of law enacted after
3 September 4, 1992, that explicitly requires the inclusion of those
4 funds in the definition of the term “private capital”; and

5 (C) funds invested in an applicant or licensee by 1 or more
6 State or local government entities (including any guarantee ex-
7 tended by such an entity) in an aggregate amount that does not
8 exceed 33 percent of the private capital of the applicant or li-
9 censee.

10 (19) SMALL BUSINESS CONCERN.—

11 (A) IN GENERAL.—The term “small business concern” has the
12 meaning given the term in section 101103 of this title, except as
13 provided in subparagraph (B).

14 (B) EXCEPTION.—For purposes of this subtitle, in determining
15 whether a business concern is a small business concern—

16 (i) an investment by a venture capital firm, investment
17 company (including a small business investment company),
18 employee welfare benefit plan, pension plan, trust, foundation,
19 or endowment that is exempt from Federal income taxation—

20 (I) shall not cause a business concern to be considered
21 not independently owned and operated regardless of the
22 allocation of control during the investment period under
23 any investment agreement between the business concern
24 and the entity making the investment;

25 (II) shall be disregarded in determining whether a
26 business concern satisfies size standards established
27 under section 101103 of this title; and

28 (III) shall be disregarded in determining whether a
29 small business concern is a smaller enterprise; and

30 (ii) in determining whether a business concern satisfies net
31 income standards established under section 101103 of this
32 title, if the business concern is not required by law to pay
33 Federal income taxes at the enterprise level, but is required
34 to pass income through to the shareholders, partners, bene-
35 ficiaries, or other equitable owners of the business concern,
36 the net income of the business concern shall be determined
37 by allowing a deduction in an amount equal to the sum of—

38 (I) if the business concern is not required by law to
39 pay State (and local, if any) income taxes at the enter-
40 prise level, the net income (determined without regard to
41 this subparagraph), multiplied by the marginal State in-

1 come tax rate (or by the combined State and local in-
2 come tax rates, as applicable) that would apply if the
3 business concern were a corporation; and

4 (II) the net income (so determined) less any deduction
5 for State (and local) income taxes calculated under sub-
6 clause (I), multiplied by the marginal Federal income tax
7 rate that would apply if the business concern were a cor-
8 poration.

9 (20) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY
10 SERVICE-DISABLED VETERANS.—The term “small business concern
11 owned and controlled by service-disabled veterans” has the meaning
12 given the term in section 101102 of this title, except that the exception
13 stated in paragraph (19)(B) of this section applies.

14 (21) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-
15 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term
16 “small business concern owned and controlled by socially and economi-
17 cally disadvantaged individuals” has the meaning given the term in sec-
18 tion 101102 of this title, except that the exception stated in paragraph
19 (19)(B) of this section applies.

20 (22) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VET-
21 ERANS.—The term “small business concern owned and controlled by vet-
22 erans” has the meaning given the term in section 101102 of this
23 title, except that the exception stated in paragraph (19)(B) of this sec-
24 tion applies.

25 (23) SMALL BUSINESS INVESTMENT COMPANY.—The term “small
26 business investment company” means a licensee.

27 (24) SMALLER ENTERPRISE.—

28 (A) IN GENERAL.—The term “smaller enterprise” means a
29 small business concern that, together with its affiliates—

30 (i) has—

31 (I) a net financial worth of not more than \$6,000,000,
32 as of the date on which assistance is provided under this
33 subtitle to that small business concern; and

34 (II) an average net income, for the 2-year period pre-
35 ceding the date on which assistance is provided under
36 this subtitle to that small business concern, of not more
37 than \$2,000,000, after Federal income taxes (excluding
38 any carryover losses); or

39 (ii) satisfies the North American Industry Classification
40 System size standards established by the Administrator for

1 the industry in which the small business concern is primarily
2 engaged.

3 (B) DETERMINATION OF NET INCOME.—For purposes of sub-
4 paragraph (A)(i)(II), if a small business concern is not required
5 by law to pay Federal income tax at the enterprise level, but is
6 required to pass income through to the shareholders, partners,
7 beneficiaries, or other equitable owners of the small business con-
8 cern, the net income of the small business concern shall be deter-
9 mined by deducting from the gross income of the small business
10 concern—

11 (i) in the case of a small business concern that is required
12 by law to pay State (and local, if any) income taxes at the
13 enterprise level, the amount that is equal to the net income
14 of the small business concern determined without regard to
15 this clause, multiplied by the marginal Federal income tax
16 rate that would apply if the small business concern were a
17 corporation; or

18 (ii) in the case of a small business concern that is not re-
19 quired by law to pay State (and local, if any) income taxes
20 at the enterprise level, the amount that is equal to the sum
21 of—

22 (I) the net income of the small business concern deter-
23 mined without regard to this clause, multiplied by the
24 marginal State income tax rate (or by the combined
25 State and local income tax rates, as applicable) that
26 would apply if the small business concern were a cor-
27 poration; and

28 (II) the net income of the small business concern de-
29 termined without regard to this clause, less any deduc-
30 tion for State (and local) income taxes calculated under
31 subclause (I), multiplied by the marginal Federal income
32 tax rate that would apply if the business concern were
33 a corporation.

34 (25) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The
35 term “specialized small business investment company” means a com-
36 pany that—

37 (A) invests solely in small business concerns that contribute to
38 a well-balanced national economy by facilitating ownership in
39 small business concerns by persons whose participation in the free
40 enterprise system is hampered because of social or economic dis-
41 advantages;

1 (B) is organized or chartered under a State business or non-
2 profit corporations statute or formed as a limited partnership; and

3 (C) was licensed under subsection (d) of section 301 of the
4 Small Business Investment Act of 1958 (15 U.S.C. 681(d)), as in
5 effect before September 30, 1996.

6 (26) STATE.—The term “State” includes a State, District of Colum-
7 bia, Puerto Rico, and any other territory (including a possession) of the
8 United States.

9 **§ 301102. Implementation of subtitle**

10 The Administrator—

11 (1) shall carry out this subtitle so as to improve and stimulate the
12 national economy in general and the small business segment of the
13 economy in particular by establishing a program to stimulate and sup-
14 plement the flow of private equity capital and long-term loan funds
15 that—

16 (A) small business concerns need for the sound financing of
17 their business operations and for their growth, expansion, and
18 modernization; and

19 (B) are not available in adequate supply; and

20 (2) in doing so—

21 (A) shall ensure the maximum participation of private financing
22 sources;

23 (B) shall ensure that any financial assistance provided under
24 this subtitle does not result in a substantial increase of unemploy-
25 ment in any area of the country; and

26 (C) in the award of financial assistance under this subtitle,
27 when practicable, shall accord priority to small business concerns
28 that lease or purchase equipment and supplies produced in the
29 United States and encourage small business concerns that receive
30 assistance under this subtitle to continue to lease or purchase
31 equipment and supplies produced in the United States.

32 **Division B—Investment Programs**

33 **Chapter 303—Small Business Investment**
34 **Company Program**

Sec.

303101. Requirements for licensing.

303102. Licensing procedure.

303103. Financial institution investments.

303104. Borrowing power.

303105. Equity capital for small business concerns.

303106. Long-term loans to small business concerns.

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of funds.

- 303110. Nonliability of the United States.
- 303111. Certifications of eligibility.
- 303112. Interest rates.
- 303113. Conflicts of interest.
- 303114. Ineligibility of guaranteed obligations for purchase by Federal Financing Bank.
- 303115. Trust certificates.
- 303116. Regulations.
- 303117. Unlawful acts and omissions.
- 303118. Investigations; examinations; valuations.
- 303119. Revocation and suspension of licenses; cease and desist orders.
- 303120. Removal or suspension of, or prohibition of participation by, management officials.
- 303121. Direct civil enforcement actions.
- 303122. Jurisdiction; service of process.

1 **§ 303101. Requirements for licensing**

2 (a) IN GENERAL.—To receive or hold a license to operate as a small busi-
3 ness investment company under this chapter, a company shall meet the re-
4 quirements of this section.

5 (b) ORGANIZATION.—The company shall be an incorporated body, limited
6 liability company, or limited partnership organized and chartered or other-
7 wise existing under State law solely for the purpose of performing the func-
8 tions and conducting the activities contemplated under this chapter.

9 (c) SUCCESSION.—The company—

10 (1) if it is an incorporated body, shall have succession for a period
11 of not less than 30 years unless it is sooner dissolved by its sharehold-
12 ers; and

13 (2) if it is a limited partnership, shall have succession for a period
14 of not less than 10 years.

15 (d) POWERS.—The company shall possess the powers reasonably nec-
16 essary to perform the functions and conducting the activities contemplated
17 under this chapter.

18 (e) AREA OF OPERATION.—The area in which the company is to conduct
19 its operations, and the establishment of branch offices or agencies (if au-
20 thorized by the articles), shall be subject to the approval of the Adminis-
21 trator.

22 (f) ARTICLES.—

23 (1) IN GENERAL.—The articles of the company shall specify in gen-
24 eral terms—

25 (A) the purposes for which the company is formed;

26 (B) the name of the company;

27 (C) the area or areas in which its operations are to be carried
28 on;

29 (D) the place where its principal office is to be located; and

30 (E) the amount and classes of its shares of capital stock.

31 (2) OTHER PROVISIONS.—The articles of the company may contain
32 any other provisions not inconsistent with this chapter that the com-

1 pany may see fit to adopt for the regulation of its business and the
2 conduct of its affairs.

3 (3) APPROVAL.—The articles of the company and any amendments
4 to the articles adopted from time to time shall be subject to the ap-
5 proval of the Administrator.

6 (g) CAPITAL REQUIREMENTS.—

7 (1) IN GENERAL.—Except as provided in paragraph (2), the private
8 capital of the company shall be not less than—

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

10 (B) \$10,000,000, with respect to a company that seeks author-
11 ity to issue participating securities to be purchased or guaranteed
12 by the Administrator under this chapter.

13 (2) EXCEPTIONS.—

14 (A) NO UNREASONABLE RISK OF DEFAULT OR LOSS.—

15 (i) IN GENERAL.—The Administrator may, on a showing of
16 special circumstances and good cause, permit the private cap-
17 ital of a company described in paragraph (1)(B) to be less
18 than \$10,000,000, but not less than \$5,000,000, if the Ad-
19 ministrator determines that doing so would not create or
20 otherwise contribute to an unreasonable risk of default or loss
21 to the Federal Government.

22 (ii) COMPANIES LICENSED BEFORE SEPTEMBER 30, 1996.—

23 The Administrator may approve leverage for a licensee li-
24 censed under subsection (c) or (d) of section 301 of the Small
25 Business Investment Act of 1958 (15 U.S.C. 681(e), (d)) be-
26 fore September 30, 1996, that does not meet the require-
27 ments of paragraph (1) if—

28 (I) the licensee certifies in writing that not less than
29 50 percent of the aggregate dollar amount of its financ-
30 ings will be provided to smaller enterprises; and

31 (II) the Administrator determines that doing so would
32 not create or otherwise contribute to an unreasonable
33 risk of default or loss to the Federal Government.

34 (B) VIABLE BUSINESS PLAN AND REASONABLE TIMETABLE.—

35 (i) IN GENERAL.—Notwithstanding any other provision of
36 this chapter, the Administrator may, on a showing of special
37 circumstances and good cause, issue a license with respect to
38 a company that would otherwise be issued a license, except
39 that the company does not satisfy the requirements of para-
40 graph (1), if the company—

1 (I) has private capital of not less than \$3,000,000;
2 and

3 (II) has a viable business plan reasonably projecting
4 profitable operations and a reasonable timetable for
5 achieving a level of private capital that satisfies the re-
6 quirements of paragraph (1).

7 (ii) LEVERAGE.—A company that is licensed pursuant to
8 the exception provided in clause (i) shall not be eligible to re-
9 ceive leverage as a licensee until the company satisfies the re-
10 quirements of paragraph (1).

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

13 (A) determine whether the private capital of the company is
14 adequate to ensure a reasonable prospect that the company will be
15 operated soundly and profitably and managed actively and pru-
16 dently in accordance with its articles;

17 (B) determine that the company, both prior to licensing and
18 prior to approving any request for financing, will be able to make
19 periodic payments on any debt of the company that is interest-
20 bearing; and

21 (C) take into consideration—

22 (i) the income that the company anticipates on its con-
23 templated investments;

24 (ii) the experience of the company's owners and managers;

25 (iii) the history of the company as an entity, if any; and

26 (iv) the company's financial resources.

27 (h) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure
28 that the management of a licensee licensed after September 30, 1996, is
29 sufficiently diversified from and unaffiliated with the ownership of the li-
30 censee in a manner that ensures independence and objectivity in the finan-
31 cial management and oversight of the investments and operations of the li-
32 censee.

33 **§ 303102. Licensing procedure**

34 (a) SUBMISSION OF APPLICATION.—An applicant for a license to operate
35 as a small business investment company under this chapter shall submit to
36 the Administrator an application, in such form and including such docu-
37 mentation as the Administrator may prescribe.

38 (b) STATUS.—Not later than 90 days after receipt by the Administrator
39 of an application under this section, the Administrator shall provide the ap-
40 plicant with a written report detailing the status of the application and any
41 requirements remaining for completion of the application.

1 (e) APPROVAL OR DISAPPROVAL.—Within a reasonable time after receiving
2 a completed application submitted in accordance with this section (including
3 such requirements as the Administrator may prescribe by regulation), the Administrator shall—

4 (1) approve the application and issue a license to the applicant if the
5 requirements of this section are satisfied; or

6 (2) disapprove the application and notify the applicant in writing of
7 the disapproval.

8 (d) MATTERS TO BE CONSIDERED.—In reviewing and processing an application
9 under this section, the Administrator—

10 (1) shall determine whether—

11 (A) the applicant meets the requirements of subsections (g) and
12 (h) of section 303101 of this title; and

13 (B) the management of the applicant is qualified and has the
14 knowledge, experience, and capability necessary to comply with
15 this chapter;

16 (2) shall take into consideration—

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

20 (B) the general business reputation of the owners and management
21 of the applicant; and

22 (C) the probability of successful operations of the applicant, including
23 adequate profitability and financial soundness; and

24 (3) shall not take into consideration any projected shortage or unavailability
25 of leverage.

26 (e) FEES.—

27 (1) IN GENERAL.—The Administrator may prescribe fees to be paid
28 by an applicant for a license.

29 (2) USE OF AMOUNTS.—Fees collected under this subsection—

30 (A) shall be deposited in the account for salaries and expenses
31 of SBA; and

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

34 § 303103. Financial institution investments

35 (a) CERTAIN BANKS.—Notwithstanding section 23A of the Federal Reserve
36 Act (12 U.S.C. 371e), a national bank, or a member bank of the Federal
37 Reserve System or nonmember insured bank to the extent permitted
38 under applicable State law, may invest in 1 or more licensees, or in an entity
39 established to invest solely in licensees, except that in no event shall
40

1 the total amount of such investments of any such bank exceed 5 percent
2 of the capital and surplus of the bank.

3 (b) FEDERAL SAVINGS ASSOCIATIONS.—Notwithstanding any other provi-
4 sion of law, a Federal savings association may invest in 1 or more licensees,
5 or in an entity established to invest solely in licensees, except that in no
6 event shall the total amount of such investments by a Federal savings asso-
7 ciation exceed 5 percent of the capital and surplus of the Federal savings
8 association.

9 **§ 303104. Borrowing power**

10 (a) AUTHORITY TO ISSUE OBLIGATIONS.—A licensee shall have authority
11 to borrow money and to issue its securities, promissory notes, or other obli-
12 gations under such general conditions and subject to such limitations and
13 regulations as the Administrator may prescribe.

14 (b) DEBENTURES AND PARTICIPATING SECURITIES.—

15 (1) AUTHORITY TO PURCHASE OR GUARANTEE.—To encourage the
16 formation and growth of small business investment companies, the Ad-
17 ministrator may, when authorized in an appropriation Act, purchase,
18 or guarantee the timely payment of all principal and interest as sched-
19 uled on, debentures or participating securities issued by a licensee.

20 (2) TERMS AND CONDITIONS.—A purchase or guarantee under para-
21 graph (1) may be made on such terms and conditions as the Adminis-
22 trator considers appropriate, under regulations prescribed by the Ad-
23 ministrator.

24 (3) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full
25 faith and credit of the United States is pledged to the payment of all
26 amounts that may be required to be paid under any guarantee under
27 this subsection.

28 (4) DEBENTURES.—

29 (A) SUBORDINATION.—A debenture purchased or guaranteed by
30 the Administrator under this subsection shall be subordinate to
31 any other debenture bond, promissory note, or other debt or obli-
32 gation of a licensee, unless the Administrator, in the exercise of
33 reasonable investment prudence and in consideration of the finan-
34 cial soundness of the licensee, determines otherwise.

35 (B) TERM; INTEREST.—A debenture purchased or guaranteed
36 by the Administrator under this subsection—

37 (i) may be issued for a term of not to exceed 15 years; and

38 (ii) shall bear interest at a rate not less than—

39 (I) a rate determined by the Secretary of the Treasury
40 taking into consideration the current average market
41 yield on outstanding marketable obligations of the

1 United States with remaining periods to maturity com-
2 parable to the average maturities on such debentures,
3 adjusted to the nearest 0.125 percent; plus

4 (II) in the case of a debenture obligated after Septem-
5 ber 30, 2001, an additional charge in an amount estab-
6 lished annually by the Administrator as necessary to re-
7 duce to zero the cost (as defined in section 502 of the
8 Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to
9 the Administrator of purchasing and guaranteeing de-
10 bentures under this chapter, which amount—

11 (aa) may not exceed 1.38 percent per year; and

12 (bb) which shall be paid to and retained by the
13 Administrator.

14 (5) OTHER TERMS AND CONDITIONS.—A debenture or participating
15 security purchased or guaranteed under this subsection shall also con-
16 tain such other terms as the Administrator may determine.

17 (6) TOTAL AMOUNT.—The total amount of debentures and partici-
18 pating securities of a licensee that may be guaranteed by the Adminis-
19 trator and outstanding shall not exceed 300 percent of the private cap-
20 ital of the licensee.

21 (7) MAXIMUM LEVERAGE.—

22 (A) IN GENERAL.—The maximum amount of outstanding lever-
23 age made available to any 1 licensee shall not exceed the lesser
24 of—

25 (i) 300 percent of the licensee's private capital; or

26 (ii) \$150,000,000.

27 (B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The
28 maximum amount of outstanding leverage made available to 2 or
29 more licensees that are commonly controlled (as determined by the
30 Administrator) and not under capital impairment shall not exceed
31 \$225,000,000.

32 (C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—

33 (i) CALCULATION OF OUTSTANDING LEVERAGE.—In cal-
34 culating the outstanding leverage of a licensee for the pur-
35 poses of subparagraph (A), the Administrator shall not in-
36 clude the amount of the cost basis of any equity investment
37 made by the licensee in a smaller enterprise located in a low-
38 income geographic area, to the extent that the total of such
39 amounts does not exceed 50 percent of the licensee's private
40 capital.

41 (ii) MAXIMUM LEVERAGE.—

1 (I) IN GENERAL.—The maximum amount of outstand-
2 ing leverage made available to—

3 (aa) any 1 licensee described in subclause (II)
4 shall not exceed the lesser of—

5 (AA) 300 percent of private capital of the li-
6 censee; or

7 (BB) \$175,000,000; and

8 (bb) 2 or more licensees described in subclause
9 (II) that are under common control (as determined
10 by the Administrator) shall not exceed
11 \$250,000,000.

12 (II) LICENSEES.—A licensee referred to in subclause
13 (I) is a company that—

14 (aa) applies for and receives a license under sec-
15 tion 303102 of this title after September 30, 2009;
16 and

17 (bb) certifies in writing that not less than 50 per-
18 cent of the dollar amount of investments of the
19 company shall be made in companies that are lo-
20 cated in a low-income geographic area.

21 (D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

22 (i) IN GENERAL.—Subject to clause (ii), in calculating the
23 outstanding leverage of a company for purposes of subpara-
24 graph (A), the Administrator shall exclude the amount of the
25 cost basis of any energy saving qualified investment in a
26 smaller enterprise made in fiscal year 2009 or any fiscal year
27 thereafter by a company licensed in the applicable fiscal year.

28 (ii) LIMITATIONS.—

29 (I) AMOUNT OF EXCLUSION.—The amount excluded
30 under clause (i) for a company shall not exceed 33 per-
31 cent of the private capital of the company.

32 (II) MAXIMUM INVESTMENT.—A company shall not
33 make an energy saving qualified investment in any 1 en-
34 tity in an amount equal to more than 20 percent of the
35 private capital of the company.

36 (III) OTHER TERMS.—The exclusion of amounts under
37 clause (i) shall be subject to such terms as the Adminis-
38 trator may impose to ensure that there is no cost (as de-
39 fined in section 502 of the Federal Credit Reform Act
40 of 1990 (2 U.S.C. 661a)) with respect to purchasing or
41 guaranteeing any debenture involved.

1 (8) AUTHORITY TO HAVE OUTSTANDING BOTH GUARANTEED DEBEN-
2 TURES AND GUARANTEED PARTICIPATING SECURITIES.—Subject to the
3 dollar and percentage limits stated in paragraphs (6) and (7), a li-
4 censee may issue and have outstanding both guaranteed debentures
5 and guaranteed participating securities so long as the total amount of
6 participating securities outstanding does not exceed 200 percent of the
7 amount of the licensee's private capital.

8 (e) 3d PARTY DEBT.—The Administrator—

9 (1) shall not permit a licensee having outstanding leverage to incur
10 3d party debt that would create or contribute to an unreasonable risk
11 of default or loss to the Federal Government; and

12 (2) shall permit a licensee having outstanding leverage to incur 3d
13 party debt only on such terms and subject to such conditions as the
14 Administrator may establish by regulation or otherwise.

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

19 (e) CAPITAL IMPAIRMENT.—

20 (1) IN GENERAL.—Before approving an application for leverage sub-
21 mitted by a licensee, the Administrator—

22 (A) shall determine that the private capital of the licensee meets
23 the requirements of section 303101(g) of this title; and

24 (B) shall determine that the private capital of the licensee has
25 not been impaired to such an extent that the issuance of addi-
26 tional leverage would create or otherwise contribute to an unrea-
27 sonable risk of default or loss to the Federal Government, taking
28 into account—

29 (i) the nature of the assets of the licensee;

30 (ii) the amount and terms of any 3d party debt owed by
31 the licensee; and

32 (iii) any other factors that the Administrator determines to
33 be relevant.

34 (2) UNIFORM APPLICABILITY.—Any regulation issued by the Admin-
35 istrator to implement this subsection that applies to any licensee with
36 outstanding leverage obtained before the effective date of the regulation
37 shall apply uniformly to all licensees with outstanding leverage obtained
38 before that effective date.

39 (f) REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—Notwith-
40 standing any other provision of law—

1 (1) the Administrator may allow the issuer of any preferred stock
2 sold to the Administrator before November 1, 1989, to redeem or re-
3 purchase the stock, on payment to the Administrator of an amount less
4 than the par value of the stock, for a repurchase price determined by
5 the Administrator after consideration of all relevant factors, includ-
6 ing—

7 (A) the market value of the stock;

8 (B) the value of benefits provided and anticipated to accrue to
9 the issuer;

10 (C) the amount of dividends paid, accrued, and anticipated; and

11 (D) the estimate of the Administrator of any anticipated re-
12 demption; and

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

17 (g) GUARANTEE OF PAYMENT OF, AND AUTHORITY TO PURCHASE, PAR-
18 TICIPATING SECURITIES.—

19 (1) DEFINITIONS.—In this subsection:

20 (A) COMBINED CAPITAL.—The term “combined capital” means
21 the aggregate amount of private capital and outstanding leverage.

22 (B) EQUITY CAPITAL.—

23 (i) IN GENERAL.—The term “equity capital” means com-
24 mon or preferred stock or a similar instrument.

25 (ii) INCLUSIONS.—The term “equity capital” includes sub-
26 ordinated debt that has equity features, is not amortized, and
27 provides for interest payments from appropriate sources, as
28 determined by the Administrator.

29 (C) MANAGEMENT EXPENSE.—

30 (i) IN GENERAL.—The term “management expense” in-
31 cludes—

32 (I) salaries;

33 (II) office expenses; and

34 (III) the costs of travel, business development, office
35 and equipment rental, bookkeeping, and the develop-
36 ment, investigation and monitoring of investments.

37 (ii) EXCLUSIONS.—The term “management expense” does
38 not include—

39 (I) the cost of services provided by specialized outside
40 consultants, outside lawyers, and outside auditors that

1 perform services not generally expected of a venture cap-
2 ital company; or

3 (II) the cost of services provided by any affiliate of a
4 licensee that are not part of the normal process of mak-
5 ing and monitoring venture capital investments.

6 (D) MAXIMUM TAX LIABILITY.—The term “maximum tax liabil-
7 ity” means the amount of income allocated to each partner, share-
8 holder, or member of a licensee (including an allocation to the Ad-
9 ministrator as if the Administrator were a taxpayer) for Federal
10 income tax purposes in the income tax return filed or to be filed
11 by the licensee with respect to the fiscal year of the licensee imme-
12 diately preceding a distribution described in clause (i) or (ii) of
13 paragraph (10)(A), multiplied by the highest combined marginal
14 Federal and State income tax rates for corporations or individuals,
15 whichever is higher, on each type of income included in the return.

16 (E) PRIORITIZED PAYMENT.—The term “prioritized payment”
17 includes—

18 (i) a dividend on stock;

19 (ii) interest on a debenture described in section
20 301101(14)(B) of this title; and

21 (iii) a priority return on a preferred limited partnership in-
22 terest that is paid only to the extent of earnings.

23 (F) STATE INCOME TAX.—The term “State income tax”, in ref-
24 erence to the State income tax liability of a licensee, means the
25 income tax of the State in which a licensee’s principal place of
26 business is located.

27 (2) AUTHORITY.—

28 (A) IN GENERAL.—To encourage licensees to provide equity
29 capital to small business concerns, the Administrator may guaran-
30 tee the payment of the redemption price and prioritized payments
31 on participating securities issued by licensees.

32 (B) PURCHASE BY TRUST OR POOL.—A trust or a pool acting
33 on behalf of the Administrator may purchase participating securi-
34 ties guaranteed under subparagraph (A).

35 (3) TERMS AND CONDITIONS.—A guarantee or purchase under para-
36 graph (2) shall be made on such terms and conditions as the Adminis-
37 trator shall establish by regulation.

38 (4) REDEMPTION OF PARTICIPATING SECURITIES.—

39 (A) IN GENERAL.—A participating security shall be redeemed
40 not later than 15 years after its date of issuance for an amount

1 equal to 100 percent of the original issue price plus the amount
2 of any accrued prioritized payment.

3 (B) CONTINUED OBLIGATION.—

4 (i) IN GENERAL.—If, at the time at which a participating
5 security is redeemed, whether as scheduled or in advance, the
6 issuing licensee—

7 (I) has not paid all accrued prioritized payments in
8 full as provided in paragraph (5); and

9 (II) has not sold or otherwise disposed of all invest-
10 ments subject to profit distributions under paragraph
11 (11);

12 the licensee's obligation to pay accrued and unpaid prioritized
13 payments shall continue, and payment shall be made from the
14 realized gain, if any, on the disposition of such investments,
15 but if on disposition there is no realized gain, the obligation
16 to pay accrued and unpaid prioritized payments shall be ex-
17 tinguished.

18 (ii) LIMITATION.—Between the date on which a participat-
19 ing security is redeemed and the date on which the licensee
20 has paid all accrued prioritized payments in full and has sold
21 or otherwise disposed of all investments subject to profit dis-
22 tributions, the licensee shall not make any in-kind distribu-
23 tions of such investments unless the licensee pays to the Ad-
24 ministrator such sums, up to the amount of the unrealized
25 appreciation on such investments, as are necessary to pay in
26 full the accrued prioritized payments.

27 (5) PRIORITIZED PAYMENTS.—Prioritized payments on a participat-
28 ing security shall be preferred and cumulative and payable out of the
29 retained earnings available for distribution (as defined by the Adminis-
30 trator) of the issuing licensee at—

31 (A) a rate determined by the Secretary of the Treasury taking
32 into consideration the current average market yield on outstanding
33 marketable obligations of the United States with remaining peri-
34 ods to maturity comparable to the average maturities on such se-
35 curities, adjusted to the nearest 0.125 percent; plus

36 (B) in the case of a participating security obligated after Sep-
37 tember 30, 2001, an additional charge, in an amount established
38 annually by the Administrator, as necessary to reduce to zero the
39 cost (as defined in section 502 of the Federal Credit Reform Act
40 of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and
41 guaranteeing participating securities under this chapter, which

1 amount may not exceed 1.46 percent per year, and which shall be
2 paid to and retained by the Administrator.

3 (6) SENIORITY OF PARTICIPATING SECURITIES ON LIQUIDATION OF
4 LICENSEE.—In the event of liquidation of a licensee, a participating se-
5 curity issued by the licensee shall be senior in priority for all purposes
6 to any other equity interest in the licensee without regard to whether
7 the participating security was issued before, on, or after the date on
8 which the other equity interest was issued.

9 (7) INVESTMENT IN EQUITY CAPITAL.—A licensee that issues a par-
10 ticipating security shall commit to invest or shall invest an amount
11 equal to the outstanding face value of the participating security solely
12 in equity capital.

13 (8) LIMITATION ON AMOUNT OF DEBT.—The only debt (other than
14 leverage obtained under this chapter) that a licensee that issues a par-
15 ticipating security may have outstanding shall be temporary debt in an
16 amount that is equal to not more than 50 percent of the amount of
17 private capital of the licensee.

18 (9) USE OF PROCEEDS TO PAY PRINCIPAL ON DEBENTURES.—The
19 Administrator may permit the proceeds of a participating security is-
20 sued by a licensee to be used to pay the principal amount due on an
21 outstanding debenture guaranteed by the Administrator if—

22 (A) the licensee has outstanding equity capital invested in an
23 amount equal to the amount of the debenture being refinanced;
24 and

25 (B) the Administrator receives profit participation on such
26 terms and conditions as the Administrator may determine, but not
27 to exceed the percentages specified in paragraph (11).

28 (10) DISTRIBUTIONS; RETURN OF CAPITAL.—

29 (A) DISTRIBUTIONS TO PARTNERS, SHAREHOLDERS, AND MEM-
30 BERS.—

31 (i) ANNUAL DISTRIBUTIONS.—Notwithstanding subpara-
32 graph (B), if a licensee is operating as a limited partnership
33 or as a subchapter S corporation or an equivalent pass-
34 through entity for tax purposes and if there are no accumu-
35 lated and unpaid prioritized payments, the licensee may make
36 annual distributions to the partners, shareholders, or mem-
37 bers in amounts not greater than each partner's, sharehold-
38 er's, or member's maximum tax liability.

39 (ii) INTERIM DISTRIBUTIONS.—In addition to an annual
40 distribution, a licensee may make a distribution under this

1 subparagraph at any time during any calendar quarter based
2 on an estimate of the maximum tax liability.

3 (iii) EXCESS DISTRIBUTION.—If a licensee makes 1 or
4 more interim distributions for a calendar year, and the aggre-
5 gate amount of those distributions exceeds the maximum
6 amount that the licensee could have distributed based on a
7 single annual computation, any subsequent distribution by the
8 licensee under this subparagraph shall be reduced by an
9 amount equal to the excess amount distributed.

10 (B) DISTRIBUTIONS TO INVESTORS.—After making any dis-
11 tributions as provided in subparagraph (A), a licensee with partici-
12 pating securities outstanding may distribute the balance of income
13 to its investors (including the Administrator, in the percentages
14 specified in paragraph (11)) if there are no accumulated and un-
15 paid prioritized payments and if all amounts due the Adminis-
16 trator under paragraph (11) have been paid in full, subject to the
17 following conditions:

18 (i) As of the date of the proposed distribution, if the
19 amount of leverage outstanding is more than 200 percent of
20 the amount of private capital, any amounts distributed shall
21 be made to private investors and to the Administrator in the
22 ratio of leverage to private capital.

23 (ii) As of the date of the proposed distribution, if the
24 amount of leverage outstanding is more than 100 percent but
25 not more than 200 percent of the amount of private capital,
26 50 percent of any amounts distributed shall be made to the
27 Administrator and 50 percent shall be made to the private in-
28 vestors.

29 (iii) If the amount of leverage outstanding is 100 percent,
30 or less, of the amount of private capital, the ratio shall be
31 that for distribution of profits as provided in paragraph (11).

32 (iv) Any amount received by the Administrator under
33 clause (i) or (ii) shall be applied 1st as profit participation
34 as provided in paragraph (11), and any remainder shall be
35 applied as a prepayment of the principal amount of the par-
36 ticipating securities or debentures.

37 (C) RETURN OF CAPITAL TO INVESTORS.—

38 (i) IN GENERAL.—After making any distributions under
39 subparagraph (A), a licensee with participating securities out-
40 standing may return capital to its investors (including the
41 Administrator) if there are no accumulated and unpaid prior-

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1 itized payments and if all amounts due the Administrator
2 under paragraph (11) have been paid in full.

3 (ii) **RATIO.**—Except as provided in clause (iii), any dis-
4 tribution under this subparagraph shall be made to private
5 investors and to the Administrator in the ratio of private cap-
6 ital to leverage as of the date of the proposed distribution.

7 (iii) **NO REQUIRED DISTRIBUTION TO ADMINISTRATOR.**—If
8 a licensee's amount of leverage outstanding is less than 50
9 percent of the amount of private capital or \$10,000,000,
10 whichever is less, no distribution shall be required to be made
11 to the Administrator unless the Administrator determines, on
12 a case by case basis, to require a distribution to the Adminis-
13 trator to reduce the amount of outstanding leverage to an
14 amount less than \$10,000,000.

15 (11) **ADMINISTRATOR'S PROFIT PARTICIPATION.**—

16 (A) **IN GENERAL.**—A licensee that issues participating securities
17 shall agree to allocate to the Administrator a share of its profits
18 determined by the relationship of its private capital to the amount
19 of participating securities guaranteed by the Administrator in ac-
20 cordance with the following:

21 (i) If the total amount of participating securities is 100
22 percent of private capital or less, the licensee shall allocate to
23 the Administrator a percentage share computed as—

24 (I) the amount of participating securities; divided by

25 (II) the amount of private capital; multiplied by

26 (III) 9 percent.

27 (ii) If the total amount of participating securities is more
28 than 100 percent but not greater than 200 percent of private
29 capital, the licensee shall allocate to the Administrator a per-
30 centage share computed as—

31 (I) 9 percent; plus

32 (II) 3 percent of—

33 (aa) the amount of participating securities minus

34 the amount of private capital; divided by

35 (bb) the amount of private capital.

36 (B) **MANAGEMENT EXPENSES.**—For purposes of computing
37 profit participation under this paragraph, except as otherwise de-
38 termined by the Administrator, the management expenses of a li-
39 censee that issues participating securities shall not be greater than
40 2.5 percent per year of the combined capital of the company, plus

1 \$125,000 if the licensee's combined capital is less than
2 \$20,000,000.

3 (C) MAXIMUM PERCENTAGE.—

4 (i) IN GENERAL.—Notwithstanding any other provision of
5 this paragraph, unless required by operation of clause (ii), the
6 total percentage required by this paragraph shall not exceed
7 12 percent.

8 (ii) ADJUSTMENT.—If, on the date on which a participat-
9 ing security is marketed, the interest rate on Treasury bonds
10 with a maturity of 10 years is a rate other than 8 percent,
11 the Administrator shall adjust the rate specified in subpara-
12 graph (A), either higher or lower, by the same percentage by
13 which the Treasury bond rate is higher or lower than 8 per-
14 cent.

15 (D) EFFECT OF PARAGRAPH.—This paragraph does not create
16 any ownership interest of the Administrator in a licensee.

17 (12) IN-KIND DISTRIBUTIONS.—

18 (A) IN GENERAL.—A licensee may make an in-kind distribution
19 of securities only if the securities are publicly traded and market-
20 able.

21 (B) ADMINISTRATOR'S SHARE.—

22 (i) IN GENERAL.—A licensee shall deposit the Administra-
23 tor's share of an in-kind distribution of securities for disposi-
24 tion with a trustee designated by the Administrator, or, at
25 the option of the Administrator and with the agreement of
26 the licensee, the Administrator may direct the licensee to re-
27 tain the Administrator's share.

28 (ii) TRUSTEE.—A trustee designated by the Administrator
29 under clause (i) shall be a person that is knowledgeable about
30 and proficient in the marketing of thinly traded securities.

31 (iii) SALE.—If the licensee retains the Administrator's
32 share, the licensee shall sell the Administrator's share and
33 promptly remit the proceeds to the Administrator.

34 (13) ADDITIONAL RESTRICTIONS AND LIMITATIONS.—Participating
35 securities guaranteed under this subsection shall be subject to such re-
36 strictions and limitations, in addition to restrictions and limitations
37 specified in this subsection, as the Administrator may determine.

38 (h) COMPUTATION OF AMOUNTS DUE UNDER PARTICIPATING SECURI-
39 TIES.—The computation of amounts due the Administrator under partici-
40 pating securities shall be subject to the following terms and conditions:

1 (1) The formula in subsection (g)(11) shall be computed annually,
2 and the Administrator shall receive distributions of the Administrator's
3 profit participation at the same time as other investors in a licensee.

4 (2) The formula shall not be modified due to an increase in the pri-
5 vate capital unless the increase is provided for in a proposed business
6 plan submitted to and approved by the Administrator.

7 (3) After a distribution is made, the Administrator's share of the
8 distribution shall not be recomputed or reduced.

9 (4) If a licensee prepays or repays a participating security, the Ad-
10 ministrator shall receive the requisite participation on the distribution
11 of profits due to any investments held by the licensee on the date of
12 the prepayment or repayment.

13 (5) A licensee that was licensed on or before March 31, 1993, may
14 exclude from profit participation all investments held on that date. If
15 such a licensee does so, the Administrator shall determine the amount
16 of the future expenses attributable to the prior investment. If the li-
17 censee issues participating securities to refinance debentures as author-
18 ized in subsection (g)(9), the licensee may not exclude profits on exist-
19 ing investments under this paragraph.

20 (i) LEVERAGE FEE.—With respect to leverage granted by the Adminis-
21 trator to a licensee, the Administrator shall collect from the licensee a non-
22 refundable fee in an amount equal to 3 percent of the face amount of the
23 leverage in the following manner:

24 (1) 1 percent on the date on which the Administrator enters into a
25 commitment for leverage with the licensee.

26 (2) The balance of 2 percent (or 3 percent if no commitment has
27 been entered into by the Administrator) on the date on which the lever-
28 age is drawn by the licensee.

29 (j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits re-
30 ceived and retained by the Administrator under this section shall be in-
31 cluded in the calculations made by the Director of the Office of Manage-
32 ment and Budget to offset the cost (as defined in section 502 of the Federal
33 Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of pur-
34 chasing and guaranteeing debentures and participating securities under this
35 chapter.

36 (k) PERIODIC ISSUANCE OF GUARANTEES.—The Administrator shall
37 issue guarantees under this section—

38 (1) at periodic intervals of not less than every 12 months; and

39 (2) at such shorter intervals as the Administrator considers appro-
40 priate, taking into consideration the amount and number of guarantees.

1 (l) ENERGY SAVING DEBENTURES.—In addition to any other authority
2 under this subtitle, a small business investment company licensed in fiscal
3 year 2009 or any fiscal year thereafter may issue energy saving debentures.

4 **§ 303105. Equity capital for small business concerns**

5 (a) FUNCTION OF LICENSEES.—It shall be a function of a licensee to pro-
6 vide a source of equity capital for small business concerns in such manner
7 and under such terms as the licensee may determine in accordance with the
8 regulations of the Administrator.

9 (b) CONDITIONS.—Before a licensee provides any capital to a small busi-
10 ness concern under this section—

11 (1) the licensee may require the small business concern to refinance
12 any or all of its outstanding indebtedness so that the licensee is the
13 only holder of any evidence of indebtedness of the small business con-
14 cern; and

15 (2) except as provided in regulations issued by the Administrator,
16 the small business concern shall agree that the small business concern
17 will not thereafter incur any indebtedness without first securing the ap-
18 proval of the licensee and giving the licensee the 1st opportunity to fi-
19 nance the indebtedness.

20 (c) DIRECT OR COOPERATIVE PROVISION OF CAPITAL.—Equity capital
21 provided to an incorporated small business concern under this section may
22 be provided directly or in cooperation with other investors, incorporated or
23 unincorporated, through agreements to participate on an immediate basis.

24 **§ 303106. Long-term loans to small business concerns**

25 (a) AUTHORIZATION.—A licensee may make a loan, in the manner and
26 subject to the conditions described in this section, to a small business con-
27 cern to provide the small business concern with funds needed for sound fi-
28 nancing, growth, modernization, and expansion.

29 (b) DIRECT LOANS; LOANS ON PARTICIPATION BASIS.—A loan made
30 under this section may be made directly or in cooperation with 1 or more
31 other lenders through an agreement to participate on an immediate or de-
32 ferred basis.

33 (c) MAXIMUM RATE OF INTEREST.—

34 (1) IN GENERAL.—The maximum rate of interest for a licensee's
35 share of a loan made under this section shall be determined by the Ad-
36 ministrator.

37 (2) BASIS OF MAXIMUM RATE.—The Administrator shall permit a li-
38 censee that has issued debentures under this chapter to charge a maxi-
39 mum rate of interest based on—

40 (A) the coupon rate of interest on the outstanding debentures,
41 determined on an annual basis; plus

1 (B) such other expenses of the licensee as may be approved by
2 the Administrator.

3 (d) MATURITY.—A loan made under this section shall have a maturity
4 not exceeding 20 years.

5 (e) SOUNDNESS OF LOAN; SECURITY.—A loan made under this section
6 shall be of such sound value, or so secured, as reasonably to ensure repay-
7 ment.

8 (f) EXTENSION OR RENEWAL.—A licensee that has made a loan to a
9 small business concern under this section may extend the maturity of or
10 renew the loan for additional periods, not exceeding 10 years, if the licensee
11 finds that the extension or renewal will aid in the orderly liquidation of the
12 loan.

13 **§ 303107. Limitation on amount of financing**

14 If a licensee has obtained financing from the Administrator and the fi-
15 nancing remains outstanding, the aggregate amount of obligations and secu-
16 rities acquired and for which commitments may be issued by the licensee
17 under this chapter for any single small business concern shall not, without
18 the approval of the Administrator, exceed 10 percent of the sum of—

19 (1) the private capital of the licensee; and

20 (2) the total amount of leverage projected by the licensee in the li-
21 censee's business plan that was approved by the Administrator at the
22 time of the grant of the licensee's license.

23 **§ 303108. Cooperation with banks and other investors or**
24 **lenders**

25 (a) IN GENERAL.—Under any circumstances in which it is practicable,
26 the operations of a licensee (including the generation of business) may be
27 undertaken in cooperation with banks or other investors or lenders, and any
28 servicing or initial investigation required for loans or acquisitions of securi-
29 ties by the licensee under this chapter may be handled through such banks
30 or other investors or lenders on a fee basis.

31 (b) FEES.—A licensee may receive fees for services rendered to banks and
32 other investors and lenders.

33 **§ 303109. Advisory services; Federal Reserve Banks as de-**
34 **positories or fiscal agents; investment of funds**

35 (a) ADVISORY SERVICES.—A licensee, under any circumstances in which
36 it is practicable, may—

37 (1) use the advisory services of the Federal Reserve System and of
38 the Department of Commerce that are available for and useful to in-
39 dustrial and commercial businesses; and

40 (2) provide consulting and advisory services on a fee basis and have
41 on its staff persons competent to provide such services.

1 (b) FEDERAL RESERVE BANK AS DEPOSITORY OR FISCAL AGENT.—A
2 Federal Reserve bank may act as a depository or fiscal agent for a licensee.

3 (c) INVESTMENT OF FUNDS.—A licensee that was licensed before October
4 1, 2004, and has outstanding financings may invest funds not needed for
5 its operations—

6 (1) in direct obligations of, or obligations guaranteed as to principal
7 and interest by, the United States;

8 (2) in certificates of deposit or other accounts of federally insured
9 banks or other federally insured depository institutions, if the certifi-
10 cates or other accounts mature or are otherwise fully available not
11 more than 1 year after the date of the investment; or

12 (3) in mutual funds, securities, or other instruments that consist of,
13 or represent pooled assets of, investments described in paragraph (1)
14 or (2).

15 **§ 303110. Nonliability of the United States**

16 Except as expressly provided otherwise in this subtitle, nothing in this
17 subtitle or in any other provision of law shall be deemed to impose any li-
18 ability on the United States with respect to any obligation entered into, or
19 stocks issued, or commitments made, by a licensee.

20 **§ 303111. Certifications of eligibility**

21 (a) CERTIFICATION BY SMALL BUSINESS CONCERN.—Before receiving fi-
22 nancial assistance from a licensee, a small business concern shall certify in
23 writing that the small business concern meets the applicable eligibility re-
24 quirements of this chapter.

25 (b) CERTIFICATION BY LICENSEE.—Before providing financial assistance
26 to a small business concern under this chapter, a licensee shall certify in
27 writing that—

28 (1) the licensee has reviewed the application for assistance of the
29 small business concern; and

30 (2) all documentation and other information supports the eligibility
31 of the applicant.

32 (c) RETENTION OF CERTIFICATIONS.—A certificate made under sub-
33 section (a) or (b) shall be retained by a licensee for the duration of the fi-
34 nancial assistance covered by the certificate.

35 **§ 303112. Interest rates**

36 (a) DEFINITION OF INTEREST.—In this section:

37 (1) IN GENERAL.—The term “interest” means the maximum manda-
38 tory sum, expressed in dollars or as a percentage rate, that is payable
39 with respect to a business loan amount received by a small business
40 concern.

1 (2) EXCLUSION.—The term “interest” does not include the value, if
2 any, of a contingent obligation (including a warrant, royalty, or conver-
3 sion right) granting a licensee an ownership interest in the equity or
4 increased future revenue of a small business concern receiving the busi-
5 ness loan.

6 (b) INTEREST RATE.—A licensee may charge interest on a loan at a rate
7 that does not exceed the maximum rate prescribed by regulation by the Ad-
8 ministrator for loans made by any licensee (determined without regard to
9 any State rate incorporated by the regulation).

10 (c) PREEMPTION OF STATE LAW.—A State law (including a constitu-
11 tional provision) shall be preempted for purposes of subsection (a) with re-
12 spect to a loan if the loan is made—

13 (1) before the date on which the State adopts a law, or certifies that
14 the voters of the State have voted in favor of any provision, constitu-
15 tional or otherwise, that states explicitly and by its terms that the
16 State does not want this section to apply with respect to loans made
17 in the State; or

18 (2) on or after the date on which such a law is adopted or such a
19 certification is made, pursuant to a commitment to make the loan that
20 was entered into before the date on which the law is adopted or the
21 certification is made.

22 (d) EXCESSIVE INTEREST.—

23 (1) FORFEITURE.—If the maximum rate of interest authorized under
24 subsection (a) on a loan made by a licensee exceeds the rate that would
25 be authorized by applicable State law if the State law were not pre-
26 empted under subsection (a), the charging of interest at a rate in ex-
27 cess of the rate authorized by subsection (a) shall be deemed a forfeit-
28 ure of the greater of—

29 (A) all interest that the loan carries with it; or

30 (B) all interest that has been agreed to be paid on the loan.

31 (2) DOUBLE RECOVERY.—In the case of a loan with respect to which
32 there is a forfeiture of interest under paragraph (1), the person that
33 paid the interest may recover from the licensee that made the loan, in
34 a civil action commenced in a court of appropriate jurisdiction not later
35 than 2 years after the most recent payment of interest, an amount
36 equal to twice the amount of the interest paid on the loan.

37 **§ 303113. Conflicts of interest**

38 (a) IN GENERAL.—For the purpose of controlling conflicts of interest
39 that may be detrimental to small business concerns, to licensees, to the
40 shareholders, partners, or members of small business concerns or licensees,

1 or to the purposes of this subtitle, the Administrator shall adopt regulations
2 to govern transactions with—

3 (1) any officer, director, shareholder, partner, or member of a li-
4 censee; or

5 (2) any person or concern in which any interest, direct or indirect,
6 financial or otherwise, is held by any officer, director, shareholder,
7 partner, or member of—

8 (A) a licensee; or

9 (B) any person or concern with an interest, direct or indirect,
10 financial or otherwise, in a licensee.

11 (b) CONTENTS.—The regulations under subsection (a) shall include ap-
12 propriate requirements for public disclosure necessary to the purposes of
13 this section.

14 **§ 303114. Ineligibility of guaranteed obligations for pur-**
15 **chase by Federal Financing Bank**

16 No provision of law authorizes the Federal Financing Bank to acquire—

17 (1) any obligation the payment of principal or interest on which has
18 at any time been guaranteed in whole or in part under this chapter;

19 (2) any obligation that is an interest in an obligation described in
20 paragraph (1); or

21 (3) any obligation that is secured by, or substantially all of the value
22 of which is attributable to, an obligation described in paragraph (1) or
23 (2).

24 **§ 303115. Trust certificates**

25 (a) ISSUANCE.—

26 (1) IN GENERAL.—The Administrator may issue trust certificates
27 representing ownership of all or a fractional part of—

28 (A) debentures issued by a licensee and guaranteed by the Ad-
29 ministrator under this chapter; or

30 (B) participating securities issued by a licensee and purchased
31 and guaranteed under section 303104 of this title.

32 (2) TRUST OR POOL.—A trust certificate issued under paragraph (1)
33 shall be based on and backed by a trust or pool approved by the Ad-
34 ministrator and composed solely of guaranteed debentures or guaran-
35 teed participating securities.

36 (b) GUARANTEE.—

37 (1) IN GENERAL.—The Administrator may, on such terms and con-
38 ditions as the Administrator considers appropriate, guarantee the time-
39 ly payment of the principal of and interest on trust certificates issued
40 by the Administrator (or an agent of the Administrator) for purposes
41 of this section.

1 (2) LIMITATION.—A guarantee shall be limited to the extent of prin-
2 cipal and interest on the guaranteed debentures or the redemption
3 price of and priority payments on the participating securities that com-
4 pose the trust or pool.

5 (3) PREPAYMENT OR REDEMPTION.—

6 (A) REDUCTION OF GUARANTEE.—If a debenture in a trust or
7 pool is prepaid or a participating security is redeemed, voluntarily
8 or involuntarily, or in the event of default of a debenture or vol-
9 untary or involuntary redemption of a participating security, the
10 guarantee of timely payment of principal and interest on the relat-
11 ed trust certificates shall be reduced in proportion to the amount
12 of principal and interest that the prepaid debenture or redeemed
13 participating security and priority payments represent in the trust
14 or pool.

15 (B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a
16 prepaid or defaulted debenture or a priority payment on a partici-
17 pating security shall accrue and be guaranteed by the Adminis-
18 trator only through the date of payment on the guarantee.

19 (C) CALL OF TRUST CERTIFICATE.—During the term of a trust
20 certificate, the trust certificate may be called for redemption due
21 to prepayment or default of all debentures or redemption, vol-
22 untary or involuntary, of all participating securities residing in the
23 trust or pool.

24 (e) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith
25 and credit of the United States is pledged to the payment of all amounts
26 that may be required to be paid under any guarantee of a trust certificate
27 issued by the Administrator (or an agent of the Administrator) under this
28 section.

29 (d) FEES.—

30 (1) ADMINISTRATOR.—The Administrator shall not collect a fee for
31 a guarantee under this section.

32 (2) AGENT OF THE ADMINISTRATOR.—This subsection does not pre-
33 clude an agent of the Administrator from collecting a fee approved by
34 the Administrator for performing the functions described in subsection
35 (f)(2).

36 (e) SUBROGATION; OWNERSHIP RIGHTS IN DEBENTURES AND PARTICI-
37 PATING SECURITIES.—

38 (1) SUBROGATION.—If the Administrator pays a claim under a guar-
39 antee issued under this section, the Administrator shall be subrogated
40 fully to the rights satisfied by the payment.

1 (2) OWNERSHIP RIGHTS IN DEBENTURES AND PARTICIPATING SECURITIES.—No Federal, State or local law shall preclude or limit the exercise by the Administrator of the Administrator’s ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

6 (f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEALERS.—

8 (1) CENTRAL REGISTRATION.—The Administrator shall provide for a central registration of all trust certificates sold under this section.

10 (2) AGENT.—

11 (A) IN GENERAL.—The Administrator shall contract with 1 or more agents to carry out on behalf of the Administrator the pooling and the central registration functions of this section including, notwithstanding any other provision of law—

15 (i) maintenance on behalf of and under the direction of the Administrator, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter; and

20 (ii) the issuance of trust certificates to facilitate such poolings.

22 (B) BOND OR INSURANCE.—An agent under subparagraph (A) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the Government.

26 (3) DISCLOSURE.—The Administrator shall require a seller of a trust certificate issued under this section to disclose to the purchaser, before the sale, information on the terms, conditions, and yield of the trust certificate.

30 (4) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates sold under this section.

34 (5) EFFECT OF SUBSECTION.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates.

36 (g) PERIODIC ISSUANCE OF TRUST CERTIFICATES.—The Administrator shall issue trust certificates under this section—

38 (1) at periodic intervals of not less than every 12 months; and

40 (2) at such shorter intervals as the Administrator considers appropriate, taking into consideration the amount and number of trust certificates.

1 **§ 303116. Regulations**

2 The Administrator may prescribe regulations governing the operations of
3 licensees, and regulations to carry out this subtitle, in accordance with the
4 purposes of this subtitle.

5 **§ 303117. Unlawful acts and omissions**

6 (a) VIOLATION BY LICENSEE DEEMED VIOLATION BY PERSON PARTICI-
7 PATING.—If a licensee violates any provision of this subtitle (including a
8 regulation issued under this subtitle) by reason of its failure to comply with
9 the terms of the provision (or regulation) or by reason of its engaging in
10 any act or practice that constitutes or will constitute a violation of the pro-
11 vision (or regulation), the violation shall also be a violation and an unlawful
12 act on the part of any person who, directly or indirectly, authorizes, orders,
13 participates in, or causes, brings about, counsels, aids, or abets in the com-
14 mission of any act, practice, or transaction that constitutes or will consti-
15 tute, in whole or in part, the violation.

16 (b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer,
17 director, employee, agent, or other participant in the management or con-
18 duct of the affairs of a licensee to engage in any act or practice, or to omit
19 any act, in breach of the fiduciary duty of the officer, director, employee,
20 agent, or participant if, as a result of engaging in the act or practice or
21 of the omission to act, the licensee suffers or is in imminent danger of suf-
22 fering financial loss or other damage.

23 (c) DISQUALIFICATION OF OFFICERS AND EMPLOYEES FOR DISHONESTY,
24 FRAUD, OR BREACH OF TRUST.—Except with the written consent of the
25 Administrator, it shall be unlawful—

26 (1) for any person to take office as an officer, director, or employee
27 of a licensee, or to become an agent or participant in the conduct of
28 the affairs or management of a licensee, if the person—

29 (A) has been convicted of—

30 (i) a felony; or

31 (ii) a lesser criminal offense that involves dishonesty or
32 breach of trust; or

33 (B) has been found civilly liable in damages, or is permanently
34 or temporarily enjoined by an order, judgment, or decree of a
35 court of competent jurisdiction, by reason of any act or practice
36 involving fraud or breach of trust; or

37 (2) for any person to continue to serve in any of the above-described
38 capacities, if the person, after November 6, 1966—

39 (A) is convicted of—

40 (i) a felony; or

- 1 (ii) a lesser criminal offense that involves dishonesty or
2 breach of trust; or
3 (B) is found civilly liable in damages, or is permanently or tem-
4 porarily enjoined by an order, judgment, or decree of a court of
5 competent jurisdiction, by reason of any act or practice involving
6 fraud or breach of trust.

7 **§ 303118. Investigations; examinations; valuations**

8 (a) INVESTIGATION OF VIOLATIONS.—

9 (1) IN GENERAL.—The Administrator may make such investigations
10 as the Administrator considers necessary to determine whether a li-
11 censee or any other person has engaged or is about to engage in an
12 act or practice that constitutes or will constitute a violation of any pro-
13 vision of this subtitle (including a regulation under this subtitle) or of
14 an order issued under this subtitle.

15 (2) STATEMENTS.—The Administrator shall permit any person to
16 file with the Administrator a statement in writing, under oath or other-
17 wise as the Administrator shall determine, as to all the facts and cir-
18 cumstances concerning the matter to be investigated.

19 (3) POWERS.—For the purpose of any investigation, the Adminis-
20 trator may administer oaths and affirmations, subpoena witnesses,
21 compel the attendance of witnesses, take evidence, and require the pro-
22 duction of any records that are relevant to the inquiry. The attendance
23 of witnesses and the production of any such records may be required
24 from any place in the United States.

25 (4) CONTUMACY OR REFUSAL TO OBEY ORDER OF THE ADMINIS-
26 TRATOR.—

27 (A) IN GENERAL.—In case of contumacy by, or refusal to obey
28 a subpoena issued to, any person (including a licensee), the Ad-
29 ministrator may invoke the aid of any court of the United States
30 within the jurisdiction of which the investigation or proceeding is
31 carried on, or in which the person resides or carries on business,
32 in requiring the attendance and testimony of witnesses and the
33 production of records, and the court may issue an order requiring
34 the person to appear before the Administrator, to produce records,
35 or to give testimony touching the matter under investigation.

36 (B) FAILURE TO OBEY COURT ORDER.—A failure to obey an
37 order of the court may be punished by the court as a contempt
38 of court.

39 (C) PROCESS.—Process in a case under this paragraph may be
40 served in the judicial district of which the person is an inhabitant
41 or wherever the person may be found.

1 (b) EXAMINATIONS OF AND REPORTS BY LICENSEES.—

2 (1) IN GENERAL.—A licensee shall be subject to examinations made
3 by direction of the Investment Division of SBA, which may be con-
4 ducted with the assistance of a private sector entity that has the quali-
5 fications to conduct and expertise in conducting such examinations.

6 (2) EXAMINATION FEE.—The Administrator may assess against a li-
7 censee that is examined, as an examination fee, the cost of the exam-
8 ination (including compensation of the examiners), and the licensee
9 shall pay the examination fee.

10 (3) USE OF EXAMINATION FEES.—Examination fees collected under
11 this subsection shall be deposited in the account for salaries and ex-
12 penses of SBA, and are authorized to be appropriated solely to cover
13 the costs of examinations and other program oversight activities.

14 (4) REPORTS.—

15 (A) IN GENERAL.—A licensee shall make such reports to the
16 Administrator at such times and in such form as the Adminis-
17 trator may require.

18 (B) EXEMPTION.—The Administrator may exempt from a re-
19 quirement to make a report a licensee that is registered under the
20 Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) to the
21 extent necessary to avoid duplication in reporting requirements.

22 (C) VIOLATION.—

23 (i) IN GENERAL.—Except as provided in clause (ii), a li-
24 censee that violates any regulation or written directive issued
25 by the Administrator requiring the filing of any regular or
26 special report under subparagraph (A) shall pay to the
27 United States a civil penalty of not more than \$100 for each
28 day of the continuance of the licensee's failure to file the re-
29 port, unless it is shown that the failure is due to reasonable
30 cause and not due to willful neglect.

31 (ii) EXEMPTION FROM REPORTING REQUIREMENTS.—

32 (I) IN GENERAL.—If the Administrator determines
33 that granting an exemption would not be inconsistent
34 with the public interest or the protection of SBA, the
35 Administrator may exempt a licensee from clause (i)—

36 (aa) in whole or in part; and

37 (bb) on such terms and conditions and for such
38 period of time as the Administrator considers nec-
39 essary and appropriate.

40 (II) PROCEDURE.—The Administrator may grant an
41 exemption under subclause (I)—

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- 1 (aa) by regulation; or
- 2 (bb) on application of an interested party, at any
- 3 time previous to a violation described in clause (i),
- 4 by order, after notice and opportunity for hearing.
- 5 (iii) ALTERNATIVE REQUIREMENTS.—The Administrator
- 6 may for purposes of this subparagraph make any alternative
- 7 requirement that the Administrator considers to be appro-
- 8 priate to a situation.
- 9 (iv) CIVIL ACTION.—The civil penalty provided for in this
- 10 subparagraph may be recovered in a civil action brought by
- 11 the Administrator.
- 12 (5) SCOPE OF EXAMINATION.—An examination shall be conducted in
- 13 such detail as to determine whether the licensee—
- 14 (A) has engaged solely in lawful activities and those con-
- 15 templated by this chapter;
- 16 (B) has engaged in prohibited conflicts of interest;
- 17 (C) has acquired or exercised illegal control of an assisted small
- 18 business;
- 19 (D) has made investments in small business concerns for not
- 20 less than 1 year;
- 21 (E) has invested more than 20 percent of its capital in any indi-
- 22 vidual small business, if that restriction is applicable;
- 23 (F) has engaged in relending, foreign investments, or passive in-
- 24 vestments; or
- 25 (G) has charged an interest rate in excess of the maximum per-
- 26 mitted by law.
- 27 (6) FREQUENCY OF EXAMINATION.—
- 28 (A) IN GENERAL.—A licensee shall be examined at least every
- 29 2 years.
- 30 (B) WAIVER.—The Administrator may waive an examination of
- 31 a licensee—
- 32 (i) for up to 1 additional year if, the Administrator deter-
- 33 mines that such a delay would be appropriate, based on the
- 34 amount of debentures being issued by the licensee and the re-
- 35 payment record of the licensee, the prior operating experience
- 36 of the licensee, the contents and results of the last examina-
- 37 tion of the licensee, and the management expertise of the li-
- 38 censee; or
- 39 (ii) if the licensee's operations have been suspended while
- 40 the licensee is involved in litigation or is in receivership.
- 41 (c) VALUATIONS.—

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(1) FREQUENCY OF VALUATIONS.—

(A) IN GENERAL.—A licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually, or otherwise on the request of the Administrator, except that a licensee with no leverage outstanding shall submit a valuation annually unless the Administrator determines otherwise.

(B) MATERIAL ADVERSE CHANGES.—Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) INDEPENDENT CERTIFICATION.—

(i) IN GENERAL.—Not less than once during each fiscal year, a licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) AUDIT REQUIREMENTS.—An audit conducted under clause (i) shall include—

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that the valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) VALUATION CRITERIA.—A valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria that—

(A) shall be established or approved by the Administrator; and

(B) shall include appropriate safeguards to ensure that the non-cash assets of a licensee are not overvalued.

§ 303119. Revocation and suspension of licenses; cease and desist orders

(a) GROUNDS FOR REVOCATION OR SUSPENSION.—The Administrator may revoke or suspend a license—

(1) for a false statement knowingly made in a written statement required under this chapter (including a regulation under this chapter);

(2) for failure, in a written statement required under this chapter (including a regulation under this chapter), to state a material fact

1 necessary to make the statement not misleading in the light of the cir-
2 cumstances under which the statement is made;

3 (3) for willful or repeated violation of, or willful or repeated failure
4 to observe, any provision of this chapter (including a regulation under
5 this chapter); or

6 (4) for violation of, or failure to observe, a cease and desist order
7 issued by the Administrator under this section.

8 (b) **GROUND FOR CEASE AND DESIST ORDER.**—If a licensee or any
9 other person has not complied with any provision of this subtitle (including
10 a regulation issued under this subtitle) or is engaging or is about to engage
11 in any act or practice that constitutes or will constitute a violation of this
12 subtitle (including a regulation), the Administrator may—

13 (1) order such licensee or other person—

14 (A) to cease and desist from the action or failure to act; and

15 (B) to take such action or to refrain from such action as the
16 Administrator considers necessary to ensure compliance with this
17 subtitle (including regulations); and

18 (2) suspend the license of a licensee against which an order has been
19 issued until the licensee complies with the order.

20 (c) **PROCEDURE.**—

21 (1) **ORDER TO SHOW CAUSE.**—

22 (A) **IN GENERAL.**—Before revoking or suspending a license
23 under subsection (a) or issuing a cease and desist order under
24 subsection (b), the Administrator shall serve on the licensee and
25 any other person involved an order to show cause why an order
26 revoking or suspending the license or a cease and desist order
27 should not be issued.

28 (B) **CONTENTS.**—An order to show cause shall—

29 (i) contain a statement of the matters of fact and law as-
30 serted by the Administrator and the legal authority and juris-
31 diction under which a hearing is to be held; and

32 (ii) state that a hearing will be held before the Adminis-
33 trator at a time and place stated in the order.

34 (2) **DETERMINATION.**—

35 (A) **IN GENERAL.**—If, after hearing (or waiver of hearing), the
36 Administrator determines on the record that an order revoking or
37 suspending the license or a cease and desist order should issue,
38 the Administrator shall promptly issue such an order.

39 (B) **CONTENTS.**—An order revoking or suspending a license or
40 cease and desist order shall—

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1 (i) include a statement of the findings of the Administrator
2 and the grounds and reasons for the order; and

3 (ii) state the effective date of the order.

4 (C) SERVICE.—The Administrator shall cause an order revoking
5 or suspending a license or cease and desist order to be served on
6 the licensee and any other person involved.

7 (d) SUBPOENAS.—

8 (1) IN GENERAL.—The Administrator may require by subpoena the
9 attendance and testimony of witnesses and the production of all records
10 relating to a hearing from any place in the United States.

11 (2) FEES AND MILEAGE.—A witness summoned before the Adminis-
12 trator shall be paid by the party at whose instance the witness is called
13 the same fees and mileage that are paid witnesses in the courts of the
14 United States.

15 (3) DISOBEDIENCE OF SUBPOENA.—In case of disobedience to a sub-
16 poena, the Administrator, or any party to a proceeding before the Ad-
17 ministrator, may invoke the aid of any court of the United States in
18 requiring the attendance and testimony of a witness and the production
19 of a record.

20 (e) PETITION TO MODIFY OR SET ASIDE ORDER.—

21 (1) FILING.—

22 (A) PETITION BY RIGHT.—An order issued by the Adminis-
23 trator under this section shall be final and conclusive unless, with-
24 in 30 days after service of the order, the licensee or other person
25 against which the order is issued appeals to the United States
26 court of appeals for the circuit in which the licensee has its prin-
27 cipal place of business by filing with the clerk of the court a peti-
28 tion praying that the Administrator's order be set aside or modi-
29 fied in the manner stated in the petition.

30 (B) PETITION BY LEAVE OF COURT.—After the expiration of
31 the 30-day period described in subparagraph (A), a petition may
32 be filed only by leave of court on a showing of reasonable grounds
33 for failure to file the petition within the 30-day period.

34 (2) TRANSCRIPT.—The clerk of the court shall immediately cause a
35 copy of the petition to be delivered to the Administrator, and the Ad-
36 ministrator shall certify and file in the court a transcript of the record
37 on which the order complained of was entered. If, before the transcript
38 is filed, the Administrator amends or sets aside the order, in whole or
39 in part, the petitioner may amend the petition within such time as the
40 court may determine, on notice to the Administrator.

1 (3) STAY OR SUSPENSION.—The filing of a petition for review shall
2 not of itself stay or suspend the operation of the order of the Adminis-
3 trator, but the court of appeals may restrain or suspend, in whole or
4 in part, the operation of the order pending the final hearing and deter-
5 mination of the petition.

6 (4) COURT ACTION.—The court may affirm, modify, or set aside the
7 order of the Administrator.

8 (5) ADDITIONAL EVIDENCE.—

9 (A) REOPENING OF HEARING.—If the court determines that the
10 just and proper disposition of the case requires the taking of addi-
11 tional evidence, the court shall order the Administrator to reopen
12 the hearing for the taking of such evidence, in such manner and
13 on such terms and conditions as the court considers proper.

14 (B) MODIFIED OR NEW FINDINGS.—The Administrator—

15 (i) may modify the findings as to the facts, or make new
16 findings, by reason of the additional evidence so taken; and

17 (ii) shall file any modified or new findings and the amend-
18 ments, if any, of the order, with the record of such additional
19 evidence.

20 (6) LIMITATION ON CONSIDERATION OF OBJECTIONS.—No objection
21 to an order of the Administrator shall be considered by the court unless
22 the objection was urged before the Administrator or, if it was not so
23 urged, unless there were reasonable grounds for failure to do so.

24 (7) REVIEW OF JUDGMENT.—A judgment of the court affirming,
25 modifying, or setting aside an order of the Administrator shall be sub-
26 ject only to review by the Supreme Court on certification or certiorari
27 as provided in section 1254 of title 28.

28 (f) ENFORCEMENT OF ORDER.—

29 (1) IN GENERAL.—If a licensee or other person against which an
30 order is issued under this section fails to obey the order, the Adminis-
31 trator—

32 (A) may apply to the United States court of appeals for the cir-
33 cuit in which the licensee has its principal place of business for
34 the enforcement of the order; and

35 (B) shall file a transcript of the record on which the order com-
36 plained of was entered.

37 (2) NOTICE.—On filing of an application under paragraph (1), the
38 court shall cause notice of the application to be served on the licensee
39 or other person.

40 (3) EVIDENCE, PROCEDURE, AND JURISDICTION.—The evidence to
41 be considered, the procedure to be followed, and the jurisdiction of the

1 court shall be the same as is provided in subsection (e) for an applica-
2 tion to set aside or modify an order.

3 **§ 303120. Removal or suspension of, or prohibition of partici-**
4 **ipation by, management officials**

5 (a) REMOVAL.—

6 (1) NOTICE OF REMOVAL.—The Administrator may serve on a man-
7 agement official a written notice of the Administrator's intention to re-
8 move the management official if, in the opinion of the Administrator—

9 (A) the management official—

10 (i) has willfully and knowingly committed a substantial vio-
11 lation of—

12 (I) this subtitle (including a regulation issued under
13 this subtitle); or

14 (II) a cease and desist order that has become final; or

15 (ii) has willfully and knowingly committed or engaged in an
16 act, omission, or practice that constitutes a substantial breach
17 of a fiduciary duty of the management official as a manage-
18 ment official; and

19 (B) the violation or breach of fiduciary duty is one involving
20 personal dishonesty on the part of the management official.

21 (2) CONTENTS OF NOTICE.—A notice under paragraph (1) shall—

22 (A) contain a statement of the facts constituting grounds for
23 the notice; and

24 (B) establish a time and place at which a hearing will be held
25 on the proposed removal.

26 (3) HEARING.—

27 (A) TIMING.—A hearing on the notice shall be established for
28 a date not earlier than 30 days nor later than 60 days after the
29 date of service of the notice under paragraph (1), unless an earlier
30 or a later date is set by the Administrator at the request of—

31 (i) the management official, for good cause; or

32 (ii) the Attorney General.

33 (B) CONSENT.—Unless the management official appears at a
34 hearing under this paragraph in person or by an authorized rep-
35 resentative, the management official shall be deemed to have con-
36 sented to the issuance of an order of removal under paragraph (4).

37 (4) ISSUANCE OF ORDER OF REMOVAL.—

38 (A) IN GENERAL.—In the event of consent under paragraph
39 (3)(B), or if on the record made at a hearing under this sub-
40 section the Administrator finds that any of the grounds specified
41 in the notice of removal has been established, the Administrator

1 may issue such orders of removal from office as the Administrator
2 considers appropriate.

3 (B) EFFECTIVENESS.—An order under subparagraph (A)
4 shall—

5 (i) become effective on the expiration of 30 days after the
6 date of service on the management official and the licensee
7 (except in the case of an order issued on consent as described
8 in paragraph (3)(B), which shall become effective at the time
9 specified in the order); and

10 (ii) remain effective and enforceable, except to such extent
11 as the order is stayed, modified, terminated, or set aside by
12 action of the Administrator or a reviewing court in accord-
13 ance with this section.

14 (b) SUSPENSION OR PROHIBITION OF PARTICIPATION.—

15 (1) IN GENERAL.—The Administrator may, if the Administrator con-
16 siders it necessary for the protection of the licensee or the interests of
17 SBA, suspend from office or prohibit from further participation in any
18 manner in the management or conduct of the affairs of a licensee, or
19 both, a management official described in subsection (a)(1) by written
20 notice to that effect served on the management official and the licensee.

21 (2) EFFECTIVENESS.—A suspension or prohibition under paragraph
22 (1)—

23 (A) shall become effective on service of notice under paragraph
24 (1); and

25 (B) unless stayed by a court in proceedings under paragraph
26 (3), shall remain in effect—

27 (i) until completion of the administrative proceedings pur-
28 suant to a notice of intention to remove served under sub-
29 section (a); and

30 (ii) until such time as the Administrator dismisses the
31 charges specified in the notice, or, if an order of removal or
32 prohibition is issued against the management official, until
33 the effective date of any such order.

34 (3) JUDICIAL REVIEW.—Not later than 10 days after a management
35 official is suspended from office or prohibited from participation in the
36 management or conduct of the affairs of a licensee under paragraph
37 (1), the management official may apply to the United States district
38 court for the judicial district in which the principal office of the li-
39 censee is located, or the United States District Court for the District
40 of Columbia, for a stay of the suspension or prohibition pending the
41 completion of the administrative proceedings pursuant to a notice of in-

1 tention to remove served on the management official under subsection
2 (a), and the court shall have jurisdiction to stay the suspension or pro-
3 hibition.

4 (e) **SUSPENSION, OR PROHIBITION OF PARTICIPATION, ON CRIMINAL**
5 **CHARGES.—**

6 (1) **IN GENERAL.—**If a management official is charged, in an infor-
7 mation, indictment, or complaint authorized by a United States attor-
8 ney, with the commission of or participation in a felony involving dis-
9 honesty or breach of trust, the Administrator may, by written notice
10 served on the management official, suspend the management official
11 from office or prohibit the management official from further participa-
12 tion in any manner in the management or conduct of the affairs of the
13 licensee, or both.

14 (2) **EFFECTIVENESS.—**A suspension or prohibition under paragraph
15 (1) shall remain in effect—

16 (A) until the subject information, indictment, or complaint is fi-
17 nally disposed of; or

18 (B) until it is terminated by the Administrator.

19 (3) **CONVICTION.—**If a judgment of conviction with respect to an of-
20 fense described in paragraph (1) is entered against a management offi-
21 cial, at such time as the judgment is not subject to further appellate
22 review, the Administrator may issue and serve on the management offi-
23 cial an order removing the management official from office, which re-
24 moval shall become effective on service of a copy of the order on the
25 licensee.

26 (4) **DISMISSAL OR OTHER DISPOSITION.—**A finding of not guilty or
27 other disposition of charges described in paragraph (1) shall not pre-
28 clude the Administrator from thereafter instituting proceedings to sus-
29 pend or remove the management official from office, or to prohibit the
30 management official from participation in the management or conduct
31 of the affairs of the licensee, or both, under subsection (a) or (b).

32 (d) **PROCEDURE.—**

33 (1) **HEARING VENUE.—**A hearing under this section shall be—

34 (A) held in the Federal judicial district or in the territory in
35 which the principal office of the licensee is located, unless the
36 party afforded the hearing consents to another place; and

37 (B) conducted in accordance with chapter 5 of title 5.

38 (2) **ISSUANCE OF ORDERS.—**After a hearing under this section, and
39 not later than 90 days after the Administrator notifies the parties that
40 the case has been submitted for final decision, the Administrator
41 shall—

1 (A) render a decision in the matter (which shall include findings
2 of fact on which the decision is predicated); and

3 (B) serve on each party to the proceeding an order or orders
4 consistent with this section.

5 (3) MODIFICATION OF ORDER.—The Administrator may modify, ter-
6minate, or set aside an order issued under this section—

7 (A) at any time, on such notice, and in such manner as the Ad-
8ministrator considers proper, unless a petition for review is timely
9 filed in a court of appeals of the United States, as provided in
10 paragraph (4)(B), and thereafter until the record in the proceed-
11ing has been filed in accordance with paragraph (4)(C); and

12 (B) on such filing of the record, with permission of the court.

13 (4) JUDICIAL REVIEW.—

14 (A) IN GENERAL.—Judicial review of an order issued under this
15 section shall be exclusively as provided in this subsection.

16 (B) PETITION FOR REVIEW.—A party to a hearing under this
17 section may obtain a review of an order issued under paragraph
18 (2) (other than an order issued with the consent of the manage-
19ment official concerned or an order issued under subsection (e))
20 by filing in the court of appeals of the United States for the cir-
21cuit in which the principal office of the licensee is located, or in
22 the United States Court of Appeals for the District of Columbia
23 Circuit, not later than 30 days after the date of service of the
24 order, a written petition praying that the order of the Adminis-
25trator be modified, terminated, or set aside.

26 (C) NOTIFICATION TO THE ADMINISTRATOR.—A copy of a peti-
27tion filed under subparagraph (B) shall be forthwith transmitted
28 by the clerk of the court to the Administrator, and thereupon the
29 Administrator shall file in the court the record in the proceeding,
30 as provided in section 2112 of title 28.

31 (D) COURT JURISDICTION.—On the filing of a petition under
32 subparagraph (B)—

33 (i) the court shall have jurisdiction, which, on the filing of
34 the record under subparagraph (C), shall be exclusive, to af-
35firm, modify, terminate, or set aside, in whole or in part, the
36 order of the Administrator;

37 (ii) review of the proceedings shall be had as provided in
38 chapter 7 of title 5; and

39 (iii) the judgment and decree of the court shall be final, ex-
40cept that the judgment and decree shall be subject to review

1 by the Supreme Court on certiorari as provided in section
2 1254 of title 28.

3 (E) JUDICIAL REVIEW NOT A STAY.—The commencement of
4 proceedings for judicial review under this paragraph shall not, un-
5 less specifically ordered by the court, operate as a stay of any
6 order issued by the Administrator under this section.

7 **§ 303121. Direct civil enforcement actions**

8 (a) FORFEITURE OF RIGHTS, PRIVILEGES, AND FRANCHISES.—

9 (1) IN GENERAL.—If a licensee violates or fails to comply with any
10 provision of this subtitle (including a regulation prescribed under this
11 subtitle), all of the licensee's rights, privileges, and franchises derived
12 from this subtitle may be forfeited.

13 (2) CIVIL ACTION.—Before a licensee is declared dissolved, or its
14 rights, privileges, and franchises forfeited, any noncompliance with or
15 violation of this subtitle shall be determined by a court of the United
16 States of competent jurisdiction in a civil action brought in the district,
17 territory, or other place subject to the jurisdiction of the United States
18 in which the principal office of the licensee is located. Any such civil
19 action shall be brought by the United States at the instance of the Ad-
20 ministrator or the Attorney General.

21 (b) INJUNCTIONS AND OTHER ORDERS.—

22 (1) IN GENERAL.—If a licensee or any other person engages or is
23 about to engage in an act or practice that constitutes or will constitute
24 a violation of any provision of this subtitle (including a regulation
25 under this subtitle) or of any order issued under this subtitle, the Ad-
26 ministrator may bring a civil action in United States district court or
27 in a United States court of any place subject to the jurisdiction of the
28 United States for an order enjoining the act or practice, or for an order
29 enforcing compliance with the provision, regulation, or order, and the
30 court shall have jurisdiction over the civil action and, on a showing by
31 the Administrator that the licensee or other person has engaged or is
32 about to engage in any such act or practice, a permanent or temporary
33 injunction, restraining order, or other order shall be granted without
34 bond.

35 (2) JURISDICTION OVER LICENSEE AND ASSETS OF THE LI-
36 CENSEE.—In a civil action under subsection (a), the court may, to such
37 extent as the court considers necessary, take exclusive jurisdiction of
38 the licensee and the assets of the licensee, wherever located, and the
39 court shall have jurisdiction to appoint a trustee or receiver to hold or
40 administer the assets of the licensee under the direction of the court.

41 (3) TRUSTEESHIP OR RECEIVERSHIP OVER LICENSEE.—

1 (A) IN GENERAL.—The Administrator may act as trustee or re-
 2 ceiver of the licensee on appointment by a court as provided in
 3 subparagraph (B).

4 (B) APPOINTMENT.—On request of the Administrator, the court
 5 may appoint the Administrator to act as trustee or receiver of the
 6 licensee unless the court considers that such an appointment
 7 would be inequitable or otherwise inappropriate by reason of spe-
 8 cial circumstances involved in the civil action.

9 **§ 303122. Jurisdiction; service of process**

10 A civil action or other proceeding brought under section 303118(b)(4)(C),
 11 303119, 303120, or 303121 of this title by the Administrator to enforce
 12 any liability or duty created by, or to enjoin any violation of, this subtitle,
 13 or any regulation or order promulgated under this subtitle shall be brought
 14 in the district in which the licensee maintains its principal office, and proce-
 15 ss in such cases may be served in any district in which the defendant main-
 16 tains its principal office or transacts business, or wherever the defendant
 17 may be found.

18 **Chapter 305—New Markets Venture**
 19 **Capital Company Program**

Sec.

- 305101. Definitions.
- 305102. Establishment of program.
- 305103. Approval of new markets venture capital companies.
- 305104. Guarantee of new markets venture capital company debentures.
- 305105. Trust certificates.
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- 305110. Regulations.
- 305111. Unlawful acts and omissions.
- 305112. Examinations.
- 305113. Removal or suspension of directors or officers.
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20 **§ 305101. Definitions**

21 In this chapter:

- 22 (1) DEVELOPMENTAL VENTURE CAPITAL.—
- 23 (A) IN GENERAL.—The term “developmental venture capital”
 24 means capital in the form of an equity capital investment in a
 25 smaller enterprise made with a primary objective of fostering eco-
 26 nomic development in a low-income geographic area.
- 27 (B) EQUITY CAPITAL.—In subparagraph (A), the term “equity
 28 capital” has the meaning given the term in section
 29 303104(g)(1)(B) of this title.
- 30 (2) ELIGIBLE COMPANY.—The term “eligible company” means a
 31 company that—

1 (A) is a newly formed for-profit entity or a newly formed for-
2 profit subsidiary of an existing entity;

3 (B) has a management team with experience in community de-
4 velopment financing or relevant venture capital financing; and

5 (C) has a primary objective of economic development of 1 or
6 more low-income geographic areas.

7 (3) LOW-INCOME INDIVIDUAL.—The term “low-income individual”
8 means an individual whose income (adjusted for family size) does not
9 exceed—

10 (A) in the case of an individual residing in a metropolitan area,
11 80 percent of the median income of all individuals residing in the
12 metropolitan area; and

13 (B) in the case of an individual residing in a nonmetropolitan
14 area, the greater of—

15 (i) 80 percent of the median income of all individuals resid-
16 ing in the nonmetropolitan area; or

17 (ii) 80 percent of the median income of all individuals re-
18 siding in all of the nonmetropolitan areas in the State in
19 which the individual resides.

20 (4) NEW MARKETS VENTURE CAPITAL COMPANY.—The term “new
21 markets venture capital company” means a company that—

22 (A) has been granted final approval by the Administrator under
23 section 305103(c) of this title; and

24 (B) has entered into a participation agreement with the Admin-
25 istrator.

26 (5) OPERATIONAL ASSISTANCE.—The term “operational assistance”
27 means management, marketing, and other technical assistance that as-
28 sists a smaller enterprise with business development.

29 (6) PARTICIPATION AGREEMENT.—The term “participation agree-
30 ment” means a participation agreement under section 305103(b)(4)(D)
31 of this title.

32 (7) PROGRAM.—The term “program” means the new markets ven-
33 ture capital company program.

34 (8) STATE.—The term “State” means a State, the District of Co-
35 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the
36 Northern Mariana Islands, and any other commonwealth, territory, or
37 possession of the United States.

38 **§ 305102. Establishment of program**

39 (a) IN GENERAL.—The Administrator shall establish a developmental
40 venture capital program to be known as the new markets venture capital
41 company program—

1 (1) with the purpose of promoting economic development and creat-
2 ing wealth and job opportunities in low-income geographic areas and
3 among individuals living in low-income geographic areas by encouraging
4 developmental venture capital investments in smaller enterprises pri-
5 marily located in low-income geographic areas; and

6 (2) with the mission of addressing the unmet equity investment
7 needs of smaller enterprises located in low-income geographic areas.

8 (b) ACTIVITIES.—Under the program, the Administrator may—

9 (1) enter into participation agreements with new markets venture
10 capital companies under section 305103(b)(4)(D) of this title for the
11 purposes described in subsection (a);

12 (2) guarantee debentures issued by new markets venture capital
13 companies under section 305104 of this title; and

14 (3) make grants to new markets venture capital companies and spe-
15 cialized small business investment companies under section 305107 of
16 this title.

17 **§ 305103. Approval of new markets venture capital compa-**
18 **nies**

19 (a) APPLICATION.—To participate in the program as a new markets ven-
20 ture capital company, an eligible company shall submit to the Administrator
21 an application that includes—

22 (1) a business plan describing how the applicant intends to make
23 successful developmental venture capital investments in identified low-
24 income geographic areas;

25 (2) information regarding the community development finance or rel-
26 evant venture capital qualifications and general reputation of the appli-
27 cant's management;

28 (3) a description of how the applicant intends to work with commu-
29 nity organizations and to seek to address the unmet capital needs of
30 the communities served;

31 (4) a proposal describing how the applicant intends to use the grant
32 funds provided under this chapter to provide operational assistance to
33 smaller enterprises financed by the applicant, including information re-
34 garding whether the applicant intends to use licensed professionals,
35 when necessary, on the applicant's staff or from an outside entity;

36 (5) with respect to binding commitments to be made to the applicant
37 under this chapter, an estimate of the ratio of cash to in-kind contribu-
38 tions;

39 (6) a description of the criteria to be used to evaluate whether and
40 to what extent the applicant meets the objectives of the program;

1 (7) information regarding the management and financial strength of
2 any parent firm, affiliated firm, or any other firm essential to the suc-
3 cess of the applicant's business plan; and

4 (8) such other information as the Administrator may require.

5 (b) CONDITIONAL APPROVAL.—

6 (1) IN GENERAL.—From among eligible companies submitting appli-
7 cations under subsection (a), the Administrator shall conditionally ap-
8 prove applicants to participate in the program.

9 (2) SELECTION CRITERIA.—In conditionally approving eligible com-
10 panies under paragraph (1), the Administrator shall consider—

11 (A) the likelihood that an applicant will meet the goal of its
12 business plan;

13 (B) the experience and background of an applicant's manage-
14 ment team;

15 (C) the need for developmental venture capital investments in
16 the geographic areas in which an applicant intends to invest;

17 (D) the extent to which an applicant will concentrate its activi-
18 ties on serving the geographic areas in which the applicant intends
19 to invest;

20 (E) the likelihood that an applicant will be able to satisfy the
21 conditions under paragraph (4);

22 (F) the extent to which the activities proposed by an applicant
23 will expand economic opportunities in the geographic areas in
24 which the applicant intends to invest;

25 (G) the strength of the applicant's proposal to provide oper-
26 ational assistance as the proposal relates to the ability of the ap-
27 plicant to meet applicable cash requirements and properly use in-
28 kind contributions, including the use of resources for the services
29 of licensed professionals, when necessary, whether provided by em-
30 ployees or by contractors; and

31 (H) any other factor that the Administrator considers appro-
32 priate.

33 (3) NATIONWIDE DISTRIBUTION.—The Administrator shall select ap-
34 plicants under paragraph (1) in a manner that promotes investment
35 nationwide.

36 (4) REQUIREMENTS FOR FINAL APPROVAL.—

37 (A) SPECIFICATION OF DATE.—On granting conditional ap-
38 proval of an applicant, the Administrator shall specify a date, not
39 to exceed the date that is 2 years after the date of conditional ap-
40 proval, by which the conditionally approved applicant shall satisfy
41 the requirements stated in this paragraph.

1 (B) CAPITAL REQUIREMENT.—A conditionally approved appli-
2 cant shall raise not less than \$5,000,000 of private capital or
3 binding capital commitments from 1 or more investors (other than
4 Federal agencies) that meet criteria established by the Adminis-
5 trator.

6 (C) RESOURCES FOR OPERATIONAL ASSISTANCE FROM OTHERS
7 THAN THE ADMINISTRATOR.—

8 (i) IN GENERAL.—To provide operational assistance to
9 smaller enterprises expected to be financed by a conditionally
10 approved applicant, the conditionally approved applicant—

11 (I) shall have binding commitments (for contribution
12 in cash or in kind)—

13 (aa) from any sources other than the Adminis-
14 trator that meet criteria established by the Adminis-
15 trator;

16 (bb) payable or available over a multiyear period
17 that the Administrator considers appropriate (not to
18 exceed 10 years); and

19 (cc) in an amount that is not less than 30 percent
20 of the total amount of capital and commitments
21 raised under subparagraph (B);

22 (II) shall have purchased from an insurance company
23 acceptable to the Administrator, using funds (other than
24 the funds raised under subparagraph (B)) from any
25 source other than the Administrator, an annuity that
26 yields cash payments over a multiyear period acceptable
27 to the Administrator (not to exceed 10 years) in an
28 amount that is not less than 30 percent of the total
29 amount of capital and commitments raised under sub-
30 paragraph (B); or

31 (III) shall have binding commitments (for contribu-
32 tions in cash or in kind) of the type described in sub-
33 clause (I) and shall have purchased an annuity of the
34 type described in subclause (II), which in the aggregate
35 make available, over a multiyear period acceptable to the
36 Administrator (not to exceed 10 years), an amount that
37 is not less than 30 percent of the total amount of capital
38 and commitments raised under subparagraph (B).

39 (ii) EXCEPTION.—On a showing of special circumstances
40 and good cause, the Administrator may consider an applicant
41 to satisfy the requirements of clause (i) if the applicant has—

1 (I) a viable plan that reasonably projects the capacity
2 of the applicant to raise the amount (in cash or in-kind)
3 required under clause (i); and

4 (II) binding commitments in an amount that is equal
5 to not less than 20 percent of the amount required under
6 clause (i).

7 (iii) LIMITATION.—To comply with the requirements of
8 clauses (i) and (ii), the amount of in-kind contributions made
9 by a conditionally approved applicant shall not exceed 50 per-
10 cent of the total contributions made by the conditionally ap-
11 proved applicant.

12 (D) PARTICIPATION AGREEMENT.—A conditionally approved ap-
13 plicant shall enter into a participation agreement with the Admin-
14 istrator that—

15 (i) details the conditionally approved applicant's operating
16 plan and investment criteria; and

17 (ii) requires the conditionally approved applicant, after
18 final approval under subsection (c), to make investments in
19 smaller enterprises at least 80 percent of which are located
20 in low-income geographic areas.

21 (c) FINAL APPROVAL.—The Administrator shall—

22 (1) grant final approval to a conditionally approved applicant to op-
23 erate as a new markets venture capital company if the conditionally ap-
24 proved applicant satisfies the requirements of paragraph (4) of sub-
25 section (b) on or before the expiration of the date specified under sub-
26 paragraph (A) of that paragraph; or

27 (2) if the conditionally approved applicant fails to satisfy those re-
28 quirements on or before the expiration of that date, revoke the condi-
29 tional approval granted under subsection (b).

30 **§ 305104. Guarantee of new markets venture capital com-**
31 **pany debentures**

32 (a) IN GENERAL.—To enable a new markets venture capital company to
33 make developmental venture capital investments in smaller enterprises in a
34 low-income geographic area, the Administrator may guarantee the timely
35 payment of principal and interest, as scheduled, on debentures issued by the
36 new markets venture capital company.

37 (b) TERMS AND CONDITIONS.—The Administrator may make a guarantee
38 under this section on such terms and conditions as the Administrator con-
39 siders appropriate, except that the term of any debenture guaranteed under
40 this section shall not exceed 15 years.

1 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith
2 and credit of the United States is pledged to pay all amounts that may be
3 required to be paid under any guarantee under this chapter.

4 (d) MAXIMUM AMOUNT OF GUARANTEE.—

5 (1) IN GENERAL.—The Administrator may guarantee the debentures
6 issued by a new markets venture capital company only to the extent
7 that the total face amount of outstanding guaranteed debentures of the
8 new markets venture capital company does not exceed 150 percent of
9 the private capital of the new markets venture capital company, as de-
10 termined by the Administrator.

11 (2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of
12 paragraph (1), private capital may include capital that is considered to
13 be Federal funds (within the meaning of section 301101(16)(C)(iii) of
14 this title) if the capital is contributed by an investor other than a Fed-
15 eral agency.

16 (e) INVESTMENT LIMITATIONS.—

17 (1) DEFINITION OF COVERED NEW MARKETS VENTURE CAPITAL
18 COMPANY.—In this subsection, the term “covered new markets venture
19 capital company” means a new markets venture capital company—

20 (A) that is granted final approval by the Administrator under
21 section 305103(c) of this title on or after March 1, 2002; and

22 (B) that has obtained a financing from the Administrator.

23 (2) LIMITATION.—Except to the extent approved by the Adminis-
24 trator, a covered new markets venture capital company shall not ac-
25 quire or issue commitments for securities under this division for any
26 single enterprise in an aggregate amount equal to more than 10 per-
27 cent of the sum of—

28 (A) the regulatory capital of the covered new markets venture
29 capital company; and

30 (B) the total amount of leverage projected in the participation
31 agreement of the covered new markets venture capital company.

32 **§ 305105. Trust certificates**

33 (a) ISSUANCE.—

34 (1) IN GENERAL.—The Administrator, acting directly or through an
35 agent, may issue trust certificates representing ownership of all or a
36 fractional part of debentures issued by a new markets venture capital
37 company and guaranteed by the Administrator under section 305104
38 of this title.

39 (2) TRUST OR POOL.—Trust certificates issued under paragraph (1)
40 shall be based on and backed by a trust or pool approved by the Ad-
41 ministrator and composed solely of guaranteed debentures.

1 (b) GUARANTEE.—

2 (1) IN GENERAL.—The Administrator may, under such terms and
3 conditions as the Administrator considers appropriate, guarantee the
4 timely payment of the principal of and interest on trust certificates is-
5 sued by the Administrator or an agent of the Administrator under this
6 section.

7 (2) LIMITATION.—A guarantee under this subsection shall be limited
8 to the extent of principal and interest on the guaranteed debentures
9 that compose the trust or pool.

10 (3) PREPAYMENT OR DEFAULT.—

11 (A) IN GENERAL.—In the event that a debenture in a trust or
12 pool is prepaid, or in the event of default of such a debenture, the
13 guarantee of timely payment of principal and interest on the trust
14 certificates shall be reduced in proportion to the amount of prin-
15 cipal and interest that the prepaid debenture represents in the
16 trust or pool.

17 (B) INTEREST PERIOD.—Interest on a prepaid or defaulted de-
18 benture shall accrue and be guaranteed by the Administrator only
19 through the date of payment of the guarantee.

20 (C) CALL.—At any time during the term of a trust certificate,
21 a trust certificate may be called for redemption due to prepayment
22 or default of all debentures that compose the trust or pool.

23 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith
24 and credit of the United States is pledged to pay all amounts that may be
25 required to be paid under any guarantee of a trust certificate issued by the
26 Administrator or an agent of the Administrator under this section.

27 (d) FEES.—The Administrator shall not collect a fee for any guarantee
28 of a trust certificate under this section, but an agent of the Administrator
29 may collect a fee approved by the Administrator for the functions described
30 in subsection (f)(2).

31 (e) SUBROGATION AND OWNERSHIP RIGHTS.—

32 (1) SUBROGATION.—If the Administrator pays a claim under a guar-
33 antee issued under this section, the Administrator shall be subrogated
34 fully to the rights satisfied by the payment.

35 (2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall pre-
36 clude or limit the exercise by the Administrator of the ownership rights
37 of the Administrator in the debentures residing in a trust or pool
38 against which trust certificates are issued under this section.

39 (f) MANAGEMENT AND ADMINISTRATION.—

40 (1) REGISTRATION.—The Administrator may provide for a central
41 registration of all trust certificates issued under this section.

1 (2) CONTRACTING OF FUNCTIONS.—

2 (A) IN GENERAL.—The Administrator may contract with 1 or
3 more agents to carry out on behalf of the Administrator the pool-
4 ing and the central registration functions provided for in this sec-
5 tion including, notwithstanding any other provision of law—

6 (i) maintenance, on behalf of and under the direction of the
7 Administrator, of such commercial bank accounts or invest-
8 ments in obligations of the United States as may be necessary
9 to facilitate the creation of trusts or pools backed by debent-
10 ures guaranteed under section 305104 of this title; and

11 (ii) the issuance of trust certificates to facilitate the cre-
12 ation of such trusts or pools.

13 (B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent
14 performing functions on behalf of the Administrator under this
15 paragraph shall provide a fidelity bond or insurance in such
16 amounts as the Administrator determines to be necessary to fully
17 protect the interests of the United States.

18 (3) REGULATION OF BROKERS AND DEALERS.—The Administrator
19 may regulate brokers and dealers in trust certificates issued under this
20 section.

21 (4) FORM OF REGISTRATION.—This subsection does not preclude the
22 use of a book-entry or other electronic form of registration for trust
23 certificates issued under this section.

24 **§ 305106. Fees**

25 Except as provided in section 305105(d) of this title, the Administrator
26 may charge such fees as the Administrator considers appropriate with re-
27 spect to any guarantee or grant issued under this chapter.

28 **§ 305107. Operational assistance grants**

29 (a) IN GENERAL.—

30 (1) AUTHORITY.—The Administrator may make a grant to a new
31 markets venture capital company or specialized small business invest-
32 ment company to enable the new markets venture capital company or
33 specialized small business investment company to provide operational
34 assistance to smaller enterprises financed, or expected to be financed,
35 by the new markets venture capital company or specialized small busi-
36 ness investment company.

37 (2) TERMS.—A grant under this subsection shall be made over a
38 multiyear period not to exceed 10 years, under such other terms as the
39 Administrator may require.

40 (3) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

1 (A) SUBMISSION OF PLAN.—A specialized small business invest-
2 ment company shall be eligible for a grant under this section only
3 if the specialized small business investment company submits to
4 the Administrator, in such form and manner as the Administrator
5 may require, a plan for use of the grant.

6 (B) USE OF FUNDS.—The proceeds of a grant made to a spe-
7 cialized small business investment company under this subsection
8 shall be used by the specialized small business investment com-
9 pany only to provide operational assistance in connection with an
10 equity investment made with capital raised after December 21,
11 2000, in a smaller enterprise located in a low-income geographic
12 area.

13 (4) GRANT AMOUNT.—

14 (A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The
15 amount of a grant made under this subsection to a new markets
16 venture capital company shall be equal to the amount of resources
17 (in cash or in kind) raised by the new markets venture capital
18 company under section 305103(b)(4)(C) of this title.

19 (B) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—
20 The amount of a grant made under this subsection to a specialized
21 small business investment company shall be equal to the resources
22 (in cash or in kind) raised by the entity in accordance with the
23 requirements applicable to new markets venture capital companies
24 under section 305103(b)(4)(C) of this title.

25 (5) PRO RATA REDUCTIONS.—If the amount made available to carry
26 out this section is insufficient for the Administrator to provide grants
27 in the amounts provided for in paragraph (4), the Administrator shall
28 make pro rata reductions in the amounts otherwise payable to each new
29 markets venture capital company and specialized small business invest-
30 ment company under that paragraph.

31 (b) SUPPLEMENTAL GRANTS.—

32 (1) IN GENERAL.—The Administrator may make a supplemental
33 grant to a new markets venture capital company or specialized small
34 business investment company under such terms as the Administrator
35 may require, to provide additional operational assistance to smaller en-
36 terprises financed, or expected to be financed, by the new markets ven-
37 ture capital company or specialized small business investment company.

38 (2) MATCHING REQUIREMENT.—The Administrator may require, as
39 a condition of a supplemental grant under this subsection, that the new
40 markets venture capital company or specialized small business invest-
41 ment company receiving the grant provide from resources (in cash or

1 in kind), other than those provided by the Administrator, a matching
2 contribution equal to the amount of the supplemental grant.

3 (c) LIMITATION.—None of the assistance made available under this sec-
4 tion may be used for any overhead or general and administrative expense
5 of a new markets venture capital company or a specialized small business
6 investment company.

7 **§ 305108. Bank participation**

8 (a) IN GENERAL.—Except as provided in subsection (b), a national bank,
9 a member bank of the Federal Reserve System, and (to the extent permitted
10 under applicable State law) an insured bank that is not a member of the
11 Federal Reserve System may invest in a new markets venture capital com-
12 pany or in an entity established to invest solely in new markets venture cap-
13 ital companies.

14 (b) LIMITATION.—A bank described in subsection (a) shall not make in-
15 vestments described in that subsection in a total amount that is greater
16 than 5 percent of the capital and surplus of the bank.

17 **§ 305109. Reporting requirement**

18 A new markets venture capital company that participates in the program
19 shall provide the Administrator such information as the Administrator may
20 require, including—

21 (1) information relating to the measurement criteria that the new
22 markets venture capital company proposed in its program application;
23 and

24 (2) in each case in which the new markets venture capital company
25 makes, under this chapter, an investment in, or a loan or grant to, a
26 business that is not located in a low-income geographic area, a report
27 on the number and percentage of employees of the business who reside
28 in a low-income geographic area.

29 **§ 305110. Regulations**

30 The Administrator may issue such regulations as the Administrator con-
31 siders necessary to carry out this chapter.

32 **§ 305111. Unlawful acts and omissions**

33 (a) PERSONS DEEMED TO COMMIT VIOLATION.—If a new markets ven-
34 ture capital company violates any provision of this subtitle (including a reg-
35 ulation issued under this subtitle) or of a participation agreement by reason
36 of the new markets venture capital company's failure to comply with terms
37 of this subtitle (including a regulation) or of the participation agreement,
38 or by reason of the new markets venture capital company's engaging in any
39 act or practice that constitutes or will constitute a violation of this subtitle
40 (including a regulation) or of the participation agreement, the violation shall
41 also be deemed to be a violation and an unlawful act committed by any per-

1 son that, directly or indirectly, authorizes, orders, participates in, causes,
2 brings about, counsels, aids, or abets in the commission of the act, practice,
3 or transaction that constitutes or will constitute, in whole or in part, the
4 violation.

5 (b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer,
6 director, employee, agent, or other participant in the management or con-
7 duct of the affairs of a new markets venture capital company to engage in
8 any act or practice, or to omit any act or practice, in breach of the person's
9 fiduciary duty as officer, director, employee, agent, or participant if, as a
10 result of the act, practice, or omission, the new markets venture capital
11 company suffers or is in imminent danger of suffering financial loss or other
12 damage.

13 (c) OTHER UNLAWFUL ACTS.—Except with the written consent of the
14 Administrator, it shall be unlawful—

15 (1) for any person to take office as an officer, director, or employee
16 of a new markets venture capital company, or to become an agent or
17 participant in the conduct of the affairs or management of a new mar-
18 kets venture capital company, if the person—

19 (A) has been convicted of—

20 (i) a felony; or

21 (ii) a lesser criminal offense that involves dishonesty or
22 breach of trust; or

23 (B) has been found civilly liable in damages, or has been perma-
24 nently or temporarily enjoined by an order, judgment, or decree
25 of a court of competent jurisdiction, by reason of any act or prac-
26 tice involving fraud or breach of trust; or

27 (2) for any person to continue to serve in any of the capacities de-
28 scribed in paragraph (1), if—

29 (A) the person is convicted of—

30 (i) a felony; or

31 (ii) a lesser criminal offense that involves dishonesty or
32 breach of trust; or

33 (B) the person is found civilly liable in damages, or is perma-
34 nently or temporarily enjoined by an order, judgment, or decree
35 of a court of competent jurisdiction, by reason of any act or prac-
36 tice involving fraud or breach of trust.

37 § 305112. Examinations

38 (a) IN GENERAL.—A new markets venture capital company that partici-
39 pates in the program shall be subject to examinations made at the direction
40 of the Investment Division of SBA in accordance with this section and mod-

1 eled after oversight developed for the small business investment company
2 program.

3 (b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under
4 this section may be conducted with the assistance of a private sector entity
5 that has both the qualifications and the expertise necessary to conduct such
6 an examination.

7 (c) COSTS.—

8 (1) IN GENERAL.—The Administrator may assess the cost of an ex-
9 amination under this section (including compensation of an examiner)
10 against the new markets venture capital company examined.

11 (2) PAYMENT.—A new markets venture capital company against
12 which the Administrator assesses costs under this paragraph shall pay
13 the costs.

14 (d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall
15 be deposited in the account for salaries and expenses of SBA.

16 **§ 305113. Removal or suspension of directors or officers**

17 Using the procedures for removing or suspending a director or an officer
18 of a licensee under section 303120 of this title (to the extent that those pro-
19 cedures are not inconsistent with the requirements of this chapter), the Ad-
20 ministrator may remove or suspend a director or officer of a new markets
21 venture capital company.

22 **§ 305114. Direct civil enforcement actions**

23 (a) FORFEITURE OF RIGHTS AND PRIVILEGES.—

24 (1) IN GENERAL.—With respect to a new markets venture capital
25 company that violates or fails to comply with any of the provisions of
26 this subtitle (including a regulation issued under this subtitle) or of
27 any participation agreement, the Administrator may—

28 (A) void the participation agreement between the Administrator
29 and the new markets venture capital company; and

30 (B) cause the new markets venture capital company to forfeit
31 all of the rights and privileges derived by the new markets venture
32 capital company from this subtitle.

33 (2) ADJUDICATION OF NONCOMPLIANCE.—

34 (A) IN GENERAL.—Before the Administrator may cause a new
35 markets venture capital company to forfeit rights or privileges
36 under paragraph (1), a court of the United States of competent
37 jurisdiction shall find that the new markets venture capital com-
38 pany committed a violation, or failed to comply, in a civil action
39 brought for that purpose in the district, territory, or other place
40 subject to the jurisdiction of the United States in which the prin-
41 cipal office of the new markets venture capital company is located.

1 (B) PARTIES AUTHORIZED TO BRING CIVIL ACTION.—A civil ac-
2 tion brought by the United States under this subsection shall be
3 brought by the Administrator or by the Attorney General.

4 (b) INJUNCTIONS AND OTHER ORDERS.—

5 (1) IN GENERAL.—If a new markets venture capital company or any
6 other person engages or is about to engage in an act or practice that
7 constitutes or will constitute a violation of any provision of this subtitle
8 (including a regulation under this subtitle) or of any order issued under
9 this subtitle, the Administrator may bring a civil action in United
10 States district court or in a United States court of any place subject
11 to the jurisdiction of the United States for an order enjoining the act
12 or practice, or for an order enforcing compliance with the provision,
13 regulation, or order, and the court shall have jurisdiction over the civil
14 action and, on a showing by the Administrator that the new markets
15 venture capital company or other person has engaged or is about to
16 engage in any such act or practice, a permanent or temporary injunc-
17 tion, restraining order, or other order shall be granted without bond.

18 (2) JURISDICTION OVER NEW MARKETS VENTURE CAPITAL COMPANY
19 AND ITS ASSETS.—In a civil action under paragraph (1), the court
20 may, to such extent as the court considers necessary, take exclusive ju-
21 risdiction of the new markets venture capital company and the assets
22 of the new markets venture capital company, wherever located, and the
23 court shall have jurisdiction to appoint a trustee or receiver to hold or
24 administer the assets of the new markets venture capital company
25 under the direction of the court.

26 (3) TRUSTEESHIP OR RECEIVERSHIP OVER NEW MARKETS VENTURE
27 CAPITAL COMPANY.—On request of the Administrator, the court may
28 appoint the Administrator to act as trustee or receiver of the new mar-
29 kets venture capital company unless the court considers that such an
30 appointment would be inequitable or otherwise inappropriate by reason
31 of special circumstances involved in the civil action.

32 **Chapter 307—Renewable Fuel Capital** 33 **Investment Pilot Program**

Sec.

- 307101. Definitions.
- 307102. Establishment of program.
- 307103. Approval of renewable fuel capital investment companies.
- 307104. Guarantee of renewable fuel capital investment company debentures.
- 307105. Trust certificates.
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307112. Conflicts of interest; unlawful acts and omissions; revocation and suspensions of licenses; cease and desist orders; injunctions and other orders.
307113. Removal or suspension of directors or officers.
307114. Termination.

1 **§ 307101. Definitions**

2 In this chapter:

3 (1) ELIGIBLE COMPANY.—The term “eligible company” means a
4 company that—

5 (A) is a newly formed for-profit entity or a newly formed for-
6 profit subsidiary of an existing entity;

7 (B) has a management team with experience in alternative en-
8 ergy financing or relevant venture capital financing; and

9 (C) has a primary objective of investment in smaller enterprises
10 that research, manufacture, develop, produce, or bring to market
11 goods, products, or services that generate or support the produc-
12 tion of renewable energy.

13 (2) OPERATIONAL ASSISTANCE.—The term “operational assistance”
14 means management, marketing, and other technical assistance that as-
15 sists a smaller enterprise with business development.

16 (3) PARTICIPATION AGREEMENT.—The term “participation agree-
17 ment” means a participation agreement under section 307103(b)(4)(D)
18 of this title.

19 (4) PROGRAM.—The term “program” means the renewable fuel cap-
20 ital investment pilot program.

21 (5) RENEWABLE ENERGY.—The term “renewable energy” means en-
22 ergy derived from resources that are regenerative or that cannot be de-
23 pleted, including solar, wind, ethanol, and biodiesel fuels.

24 (6) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY.—The term
25 “renewable fuel capital investment company” means a company—

26 (A) that—

27 (i) has been granted final approval by the Administrator
28 under section 307103(c) of this title; and

29 (ii) has entered into a participation agreement with the Ad-
30 ministrator; or

31 (B) that has received conditional approval under section
32 307103(b) of this title.

33 (7) STATE.—The term “State” means a State, the District of Co-
34 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the
35 Northern Mariana Islands, and any other commonwealth, territory, or
36 possession of the United States.

37 (8) VENTURE CAPITAL.—The term “venture capital” means capital
38 in the form of equity capital (as defined in section 303104(g)(1)(B) of
39 this title) investments.

1 **§ 307102. Establishment of program**

2 (a) IN GENERAL.—The Administrator shall establish a renewable fuel
3 capital investment program—

4 (1) with the purpose of promoting the research, development, manu-
5 facture, production, and bringing to market of goods, products, or serv-
6 ices that generate or support the production of renewable energy by en-
7 couraging venture capital investments in smaller enterprises primarily
8 engaged in such activities; and

9 (2) with the mission of addressing the unmet equity investment
10 needs of smaller enterprises engaged in researching, developing, manu-
11 facturing, producing, and bringing to market goods, products, or serv-
12 ices that generate or support the production of renewable energy.

13 (b) ACTIVITIES.—Under the program, the Administrator may—

14 (1) enter into participation agreements with renewable fuel capital
15 investment companies under section 307103(b)(4)(D) of this title for
16 the purposes described in subsection (a);

17 (2) guarantee debentures issued by renewable fuel capital investment
18 companies under section 307104 of this title; and

19 (3) make grants to renewable fuel investment capital companies
20 under section 307107 of this title.

21 **§ 307103. Approval of renewable fuel capital investment**
22 **companies**

23 (a) APPLICATION.—An eligible company desiring to be designated as a re-
24 newable fuel capital investment company shall submit to the Administrator
25 an application that includes—

26 (1) a business plan describing how the applicant intends to make
27 successful venture capital investments in smaller enterprises primarily
28 engaged in the research, manufacture, development, production, or
29 bringing to market of goods, products, or services that generate or sup-
30 port the production of renewable energy;

31 (2) information regarding the relevant venture capital qualifications
32 and general reputation of the applicant's management;

33 (3) a description of how the applicant intends to seek to address the
34 unmet capital needs of the smaller enterprises served;

35 (4) a proposal describing how the applicant intends to use the grant
36 funds provided under this chapter to provide operational assistance to
37 smaller enterprises financed by the applicant, including information re-
38 garding whether the applicant has employees with appropriate profes-
39 sional licenses or will contract with another entity when the services of
40 such an individual are necessary;

1 (5) with respect to binding commitments to be made to the applicant
2 under this chapter, an estimate of the ratio of cash to in-kind contribu-
3 tions;

4 (6) a description of whether and to what extent the applicant meets
5 the criteria under subsection (b)(2) and the objectives of the program;

6 (7) information regarding the management and financial strength of
7 any parent firm, affiliated firm, or any other firm essential to the suc-
8 cess of the applicant's business plan; and

9 (8) such other information as the Administrator may require.

10 (b) **CONDITIONAL APPROVAL.**—

11 (1) **IN GENERAL.**—From among eligible companies submitting appli-
12 cations under subsection (a), the Administrator shall conditionally ap-
13 prove applicants to operate as renewable fuel capital investment compa-
14 nies.

15 (2) **SELECTION CRITERIA.**—In conditionally approving companies
16 under paragraph (1), the Administrator shall consider—

17 (A) the likelihood that an applicant will meet the goal of its
18 business plan;

19 (B) the experience and background of an applicant's manage-
20 ment team;

21 (C) the need for venture capital investments in the geographic
22 areas in which an applicant intends to invest;

23 (D) the extent to which an applicant will concentrate its activi-
24 ties on serving the geographic areas in which the applicant intends
25 to invest;

26 (E) the likelihood that an applicant will be able to satisfy the
27 conditions under paragraph (4);

28 (F) the extent to which the activities proposed by the applicant
29 will expand economic opportunities in the geographic areas in
30 which the company intends to invest;

31 (G) the strength of the applicant's proposal to provide oper-
32 ational assistance as the proposal relates to the ability of the ap-
33 plicant to meet applicable cash requirements and properly use in-
34 kind contributions, including the use of resources for the services
35 of licensed professionals, when necessary, whether provided by em-
36 ployees or by contractors; and

37 (H) any other factor that the Administrator considers appro-
38 priate.

39 (3) **NATIONWIDE DISTRIBUTION.**—From among eligible companies
40 submitting applications under subsection (a), the Administrator shall
41 consider the selection criteria under paragraph (2) and shall, to the

1 maximum extent practicable, approve at least 1 applicant from each ge-
2 ographic SBA region.

3 (4) REQUIREMENTS FOR FINAL APPROVAL.—

4 (A) IN GENERAL.—On granting conditional approval of an ap-
5 plicant, the Administrator shall grant each conditionally approved
6 applicant 2 years to satisfy the requirements stated in this para-
7 graph.

8 (B) CAPITAL REQUIREMENT.—A conditionally approved appli-
9 cant shall raise not less than \$3,000,000 of private capital or
10 binding capital commitments from 1 or more investors (other than
11 Federal agencies) that meet criteria established by the Adminis-
12 trator.

13 (C) RESOURCES FOR OPERATIONAL ASSISTANCE FROM OTHERS
14 THAN THE ADMINISTRATOR.—

15 (i) IN GENERAL.—To provide operational assistance to
16 smaller enterprises expected to be financed by the applicant,
17 a conditionally approved applicant shall have binding commit-
18 ments (for contribution in cash or in-kind)—

19 (I) from any source other than the Administrator that
20 meet criteria established by the Administrator; and

21 (II) payable or available over a multiyear period that
22 the Administrator considers appropriate (not to exceed
23 10 years).

24 (ii) EXCEPTION.—On a showing of special circumstances
25 and good cause, the Administrator may consider an applicant
26 to satisfy the requirements of clause (i) if the applicant has—

27 (I) a viable plan that reasonably projects the capacity
28 of the applicant to raise the amount (in cash or in-kind)
29 required under clause (i); and

30 (II) binding commitments in an amount that is equal
31 to not less than 20 percent of the amount required under
32 clause (i).

33 (iii) LIMITATION.—To comply with the requirements of
34 clauses (i) and (ii), the amount of in-kind contributions made
35 by a conditionally approved applicant shall not exceed 50 per-
36 cent of the total contributions made by the conditionally ap-
37 proved applicant.

38 (D) PARTICIPATION AGREEMENT.—A conditionally approved ap-
39 plicant shall enter into a participation agreement with the Admin-
40 istrator that—

1 (i) details the conditionally approved applicant's operating
2 plan and investment criteria; and

3 (ii) requires the conditionally approved applicant, after
4 final approval under subsection (c), to make investments in
5 smaller enterprises primarily engaged in researching, manu-
6 facturing, developing, producing, or bringing to market goods,
7 products, or services that generate or support the production
8 of renewable energy.

9 (c) FINAL APPROVAL.—The Administrator shall, with respect to each ap-
10 plicant conditionally approved under subsection (b)—

11 (1) grant final approval to the conditionally approved applicant to
12 operate as a renewable fuel capital investment company if the condi-
13 tionally approved applicant satisfies the requirements of paragraph (4)
14 of subsection (b) on or before the expiration of the time period de-
15 scribed in that subsection; or

16 (2) if the conditionally approved applicant fails to satisfy those re-
17 quirements on or before the expiration of that time period, revoke the
18 conditional approval granted under subsection (b).

19 **§ 307104. Guarantee of renewable fuel capital investment**
20 **company debentures**

21 (a) IN GENERAL.—To enable a renewable fuel capital investment com-
22 pany to make venture capital investments in smaller enterprises engaged in
23 the research, development, manufacture, production, and bringing to market
24 of goods, products, or services that generate or support the production of
25 renewable energy, the Administrator may guarantee the timely payment of
26 principal and interest, as scheduled, on debentures issued by the renewable
27 fuel capital investment company.

28 (b) TERMS AND CONDITIONS.—The Administrator may make a guarantee
29 under this section on such terms and conditions as the Administrator con-
30 siders appropriate, except that—

31 (1) the term of any debenture guaranteed under this section shall
32 not exceed 15 years; and

33 (2) a debenture guaranteed under this section—

34 (A) shall carry no front-end or annual fees;

35 (B) shall be issued at a discount;

36 (C) shall require no interest payments during the 5-year period
37 beginning on the date on which the debenture is issued;

38 (D) shall be prepayable without penalty after the end of the 1-
39 year period beginning on the date on which the debenture is is-
40 sued; and

1 (E) shall require semiannual interest payments after the period
2 described in subparagraph (C).

3 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith
4 and credit of the United States is pledged to pay all amounts that may be
5 required to be paid under any guarantee under this chapter.

6 (d) MAXIMUM AMOUNT OF GUARANTEE.—

7 (1) IN GENERAL.—The Administrator may guarantee the debentures
8 issued by a renewable fuel capital investment company only to the ex-
9 tent that the total face amount of outstanding guaranteed debentures
10 of the renewable fuel capital investment company does not exceed 150
11 percent of the private capital of the renewable fuel capital investment
12 company, as determined by the Administrator.

13 (2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of
14 paragraph (1), private capital includes capital that is considered to be
15 Federal funds (within the meaning of section 301101(16)(C)(iii) of this
16 title) if the capital is contributed by an investor other than a Federal
17 agency.

18 **§ 307105. Trust certificates**

19 (a) ISSUANCE.—

20 (1) IN GENERAL.—The Administrator, acting directly or through an
21 agent, may issue trust certificates representing ownership of all or a
22 fractional part of debentures issued by a renewable fuel capital invest-
23 ment company and guaranteed by the Administrator under section
24 307104 of this title.

25 (2) TRUST OR POOL.—Trust certificates issued under paragraph (1)
26 shall be based on and backed by a trust or pool approved by the Ad-
27 ministrator and composed solely of guaranteed debentures.

28 (b) GUARANTEE.—

29 (1) IN GENERAL.—The Administrator may, under such terms and
30 conditions as the Administrator considers appropriate, guarantee the
31 timely payment of the principal of and interest on trust certificates is-
32 sued by the Administrator or an agent of the Administrator under this
33 section.

34 (2) LIMITATION.—A guarantee under this subsection shall be limited
35 to the extent of principal and interest on the guaranteed debentures
36 that compose the trust or pool.

37 (3) PREPAYMENT OR DEFAULT.—

38 (A) IN GENERAL.—In the event that a debenture in a trust or
39 pool is prepaid, or in the event of default of such a debenture, the
40 guarantee of timely payment of principal and interest on the trust
41 certificates shall be reduced in proportion to the amount of prin-

1 cipal and interest that the prepaid debenture represents in the
2 trust or pool.

3 (B) INTEREST PERIOD.—Interest on a prepaid or defaulted de-
4 benture shall accrue and be guaranteed by the Administrator only
5 through the date of payment of the guarantee.

6 (C) CALL.—At any time during the term of a trust certificate,
7 a trust certificate may be called for redemption due to prepayment
8 or default of all debentures that compose the trust or pool.

9 (e) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith
10 and credit of the United States is pledged to pay all amounts that may be
11 required to be paid under any guarantee of a trust certificate issued by the
12 Administrator or an agent of the Administrator under this section.

13 (d) FEES.—The Administrator shall not collect a fee for any guarantee
14 of a trust certificate under this section, but an agent of the Administrator
15 may collect a fee approved by the Administrator for the functions described
16 in subsection (f)(2).

17 (e) SUBROGATION AND OWNERSHIP RIGHTS.—

18 (1) SUBROGATION.—If the Administrator pays a claim under a guar-
19 antee issued under this section, the Administrator shall be subrogated
20 fully to the rights satisfied by the payment.

21 (2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall pre-
22 clude or limit the exercise by the Administrator of the ownership rights
23 of the Administrator in the debentures residing in a trust or pool
24 against which trust certificates are issued under this section.

25 (f) MANAGEMENT AND ADMINISTRATION.—

26 (1) REGISTRATION.—The Administrator may provide for a central
27 registration of all trust certificates issued under this section.

28 (2) CONTRACTING OF FUNCTIONS.—

29 (A) IN GENERAL.—The Administrator may contract with 1 or
30 more agents to carry out on behalf of the Administrator the pool-
31 ing and the central registration functions provided for in this sec-
32 tion including, notwithstanding any other provision of law—

33 (i) maintenance, on behalf of and under the direction of the
34 Administrator, of such commercial bank accounts or invest-
35 ments in obligations of the United States as may be necessary
36 to facilitate the creation of trusts or pools backed by deben-
37 tures guaranteed under section 307104 of this title; and

38 (ii) the issuance of trust certificates to facilitate the cre-
39 ation of such trusts or pools.

40 (B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent
41 performing functions on behalf of the Administrator under this

1 paragraph shall provide a fidelity bond or insurance in such
2 amounts as the Administrator determines to be necessary to fully
3 protect the interests of the United States.

4 (3) REGULATION OF BROKERS AND DEALERS.—The Administrator
5 may regulate brokers and dealers in trust certificates issued under this
6 section.

7 (4) FORM OF REGISTRATION.—This subsection does not preclude the
8 use of a book-entry or other electronic form of registration for trust
9 certificates issued under this section.

10 **§ 307106. Fees**

11 (a) IN GENERAL.—Except as provided in section 307105(d) of this title,
12 the Administrator may charge such fees as the Administrator considers ap-
13 propriate with respect to any guarantee or grant issued under this chapter,
14 in an amount established annually by the Administrator, as necessary to re-
15 duce to zero the cost (as defined in section 502 of the Federal Credit Re-
16 form Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and
17 guaranteeing debentures under this chapter, which amounts shall be paid
18 to and retained by the Administrator.

19 (b) OFFSET.—The Administrator may, as provided by subsection (c), off-
20 set fees charged and collected under subsection (a).

21 (c) FEE CONTRIBUTION.—

22 (1) IN GENERAL.—To the extent that amounts are made available
23 to the Administrator for the purpose of fee contributions, the Adminis-
24 trator shall contribute to fees paid by the renewable fuel capital invest-
25 ment companies under subsection (a).

26 (2) ANNUAL ADJUSTMENT.—Each fee contribution under paragraph
27 (1) shall be effective for 1 fiscal year and shall be adjusted as nec-
28 essary for each fiscal year thereafter to ensure that amounts under
29 paragraph (1) are fully used. The fee contribution for a fiscal year
30 shall be based on the outstanding commitments made and the guaran-
31 tees and grants that the Administrator projects will be made during
32 the fiscal year, given the program level authorized by law for that fiscal
33 year and any other factors that the Administrator considers appro-
34 priate.

35 **§ 307107. Operational assistance grants**

36 (a) IN GENERAL.—

37 (1) AUTHORITY.—The Administrator may make a grant to a renew-
38 able fuel capital investment company to enable the renewable fuel cap-
39 ital investment company to provide operational assistance to smaller
40 enterprises financed, or expected to be financed, by the renewable fuel
41 capital investment company.

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1 (2) TERMS.—A grant under this subsection shall be made over a
2 multiyear period not to exceed 10 years, under such other terms as the
3 Administrator may require.

4 (3) GRANT AMOUNT.—The amount of a grant made under this sub-
5 section to a renewable fuel capital investment company shall be equal
6 to the lesser of—

7 (A) 10 percent of the resources (in cash or in kind) raised by
8 the renewable fuel capital investment company under section
9 307103(b)(4)(B) of this title; or

10 (B) \$1,000,000.

11 (4) PRO RATA REDUCTIONS.—If the amount made available to carry
12 out this section is insufficient for the Administrator to provide grants
13 in the amounts provided for in paragraph (3), the Administrator shall
14 make pro rata reductions in the amounts otherwise payable to each re-
15 newable fuel capital investment company under that paragraph.

16 (5) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

17 (A) IN GENERAL.—Subject to subparagraphs (B) and (C), on
18 the request of a renewable fuel capital investment company condi-
19 tionally approved under section 307103(b) of this title, the Admin-
20 istrator shall make a grant to the renewable fuel capital invest-
21 ment company under this subsection.

22 (B) REPAYMENT BY RENEWABLE FUEL CAPITAL INVESTMENT
23 COMPANIES NOT FINALLY APPROVED.—If a renewable fuel capital
24 investment company receives a grant under this paragraph and
25 does not enter into a participation agreement for final approval,
26 the renewable fuel capital investment company shall, subject to
27 controlling Federal law, repay the amount of the grant to the Ad-
28 ministrator.

29 (C) DEDUCTION OF GRANT TO APPROVED COMPANY.—If a re-
30 newable fuel capital investment company receives a grant under
31 this paragraph and receives final approval under section
32 307103(c) of this title, the Administrator shall deduct the amount
33 of the grant from the total grant amount that the renewable fuel
34 capital investment company receives for operational assistance.

35 (D) AMOUNT OF GRANT.—No renewable fuel capital investment
36 company may receive a grant of more than \$100,000 under this
37 paragraph.

38 (b) SUPPLEMENTAL GRANTS.—

39 (1) IN GENERAL.—The Administrator may make a supplemental
40 grant to a renewable fuel capital investment company under such terms
41 as the Administrator may require, to provide additional operational as-

1 sistance to smaller enterprises financed, or expected to be financed, by
2 the renewable fuel capital investment company.

3 (2) **MATCHING REQUIREMENT.**—The Administrator may require, as
4 a condition of a supplemental grant under this subsection, that the re-
5 newable fuel capital investment company receiving the grant provide
6 from resources (in cash or in kind), other than those provided by the
7 Administrator, a matching contribution equal to the amount of the sup-
8 plemental grant.

9 (c) **LIMITATION.**—None of the assistance made available under this sec-
10 tion may be used for any overhead or general and administrative expense
11 of a renewable fuel capital investment company.

12 **§ 307108. Bank participation**

13 (a) **IN GENERAL.**—Except as provided in subsection (b), a national bank,
14 a member bank of the Federal Reserve System, and (to the extent permitted
15 under applicable State law) an insured bank that is not a member of the
16 Federal Reserve System may invest in any renewable fuel capital investment
17 company or in any entity established to invest solely in renewable fuel cap-
18 ital investment companies.

19 (b) **LIMITATION.**—A bank described in subsection (a) shall not make in-
20 vestments described in that subsection in a total amount that is greater
21 than 5 percent of the capital and surplus of the bank.

22 **§ 307109. Reporting requirement**

23 A renewable fuel capital investment company that participates in the pro-
24 gram shall provide the Administrator such information as the Administrator
25 may require, including—

26 (1) information relating to the measurement criteria that the renew-
27 able fuel capital investment company proposed in its program applica-
28 tion; and

29 (2) in each case in which the renewable fuel capital investment com-
30 pany makes, under this chapter, an investment in, or a loan or a grant
31 to, a business that is not primarily engaged in the research, develop-
32 ment, manufacture, or bringing to market or renewable energy sources,
33 a report on the nature, origin, and revenues of the business in which
34 investments are made.

35 **§ 307110. Regulations**

36 The Administrator may issue such regulations as the Administrator con-
37 siders necessary to carry out this chapter.

38 **§ 307111. Examinations**

39 (a) **IN GENERAL.**—A renewable fuel capital investment company that par-
40 ticipates in the program shall be subject to examinations made at the direc-
41 tion of the Investment Division of SBA in accordance with this section and

1 modeled after oversight developed for the small business investment com-
2 pany program.

3 (b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under
4 this section may be conducted with the assistance of a private sector entity
5 that has both the qualifications and the expertise necessary to conduct such
6 an examination.

7 (c) COSTS.—

8 (1) IN GENERAL.—The Administrator may assess the cost of an ex-
9 amination under this section (including compensation of an examiner)
10 against the renewable fuel capital investment company examined.

11 (2) PAYMENT.—A renewable fuel capital investment company
12 against which the Administrator assesses costs under this paragraph
13 shall pay the costs.

14 (d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall
15 be deposited in the account for salaries and expenses of SBA.

16 **§ 307112. Conflicts of interest; unlawful acts and omissions;
17 revocation and suspensions of licenses; cease and
18 desist orders; injunctions and other orders**

19 (a) ACTIONS AND PROCEDURES UNDER OTHER PROVISIONS.—To the ex-
20 tent that the actions and procedures described in sections 303113, 303117,
21 303119, and 303121(b) of this title are not inconsistent with the require-
22 ments of this chapter, the Administrator may take those actions under those
23 procedures in carrying out this chapter.

24 (b) APPLICABILITY OF REQUIREMENTS UNDER OTHER PROVISIONS.—To
25 the extent that the requirements described in sections 303113, 303117,
26 303119, and 303121(b) of this title are not inconsistent with the require-
27 ments of this chapter, an officer, director, employee, agent, or other partici-
28 pant in the management or conduct of the affairs of a renewable fuel capital
29 investment company shall be subject to the requirements of sections
30 303113, 303117, 303119, and 303121(b) of this title.

31 **§ 307113. Removal or suspension of directors or officers**

32 Using the procedures for removing or suspending a director or an officer
33 of a licensee under section 303120 of this title (to the extent that those pro-
34 cedures are not inconsistent with the requirements of this chapter), the Ad-
35 ministrator may remove or suspend a director or officer of a renewable fuel
36 capital investment company.

37 **§ 307114. Termination**

38 The program shall terminate at the end of the 2d full fiscal year after
39 the date on which the Administrator establishes the program.

1 **Division C—Surety Bond Guarantee**
2 **Program**
3 **Chapter 321—Surety Bond Guarantee**
4 **Program**

Sec.

321101. Definitions.

321102. Surety bond guarantees and indemnification agreements.

321103. Surety bond guarantee fund.

5 **§ 321101. Definitions**

6 In this chapter:

7 (1) **BID BOND.**—The term “bid bond” means a bond conditioned on
8 the bidder on a contract—

9 (A) entering into the contract, if the bidder receives the award
10 of the contract; and

11 (B) furnishing the prescribed payment bond and performance
12 bond.

13 (2) **BOND.**—Except in paragraphs (1), (7), and (8), the term “bond”
14 means—

15 (A) a bid bond;

16 (B) a payment bond;

17 (C) a performance bond; and

18 (D) a bond that is ancillary to a bid bond, payment bond, or
19 performance bond.

20 (3) **GUARANTEE.**—The term “guarantee” means a guarantee of a
21 bond issued under section 321102(a) of this title.

22 (4) **INDEMNIFICATION AGREEMENT.**—The term “indemnification
23 agreement” means an agreement entered into between the Adminis-
24 trator and a participating surety under section 321102(b) of this title.

25 (5) **OBLIGEE.**—The term “obligee” means—

26 (A) in the case of a bid bond, the person requesting bids for
27 the performance of a contract; or

28 (B) in the case of a payment bond or performance bond, the
29 person that has contracted with a principal for the completion of
30 the contract and to which the obligation of the surety runs in the
31 event of a breach by the principal of a condition of a payment
32 bond or performance bond.

33 (6) **PARTICIPATING SURETY.**—

34 (A) **IN GENERAL.**—The term “participating surety” means a
35 surety to which a guarantee or commitment to guarantee is issued
36 under section 321102(a)(1) of this title.

37 (B) **INCLUSION.**—The term “participating surety” includes a
38 preferred surety.

1 (7) PAYMENT BOND.—The term “payment bond” means a bond con-
2 ditioned on the payment by the principal of money to persons under
3 contract with the principal.

4 (8) PERFORMANCE BOND.—The term “performance bond” means a
5 bond conditioned on the completion by the principal of a contract in
6 accordance with the terms of the contract.

7 (9) PREFERRED SURETY.—The term “preferred surety” means a
8 participating surety that is a participant in the preferred surety bond
9 guarantee program.

10 (10) PREFERRED SURETY BOND GUARANTEE PROGRAM.—The term
11 “preferred surety bond guarantee program” means the program under
12 section 321102(a)(5) of this title.

13 (11) PRIME CONTRACTOR.—The term “prime contractor” means the
14 person with whom the obligee has contracted to perform the contract.

15 (12) PRINCIPAL.—

16 (A) IN GENERAL.—The term “principal” means—

17 (i) in the case of a bid bond, a person that bids for the
18 award of a contract; or

19 (ii) the person—

20 (I) that is primarily liable to complete a contract for
21 the obligee or to make a payment to another person in
22 respect of the contract; and

23 (II) for whose performance of the person’s obligation
24 the surety is bound under the terms of a payment bond
25 or performance bond.

26 (B) PRIME CONTRACTOR OR SUBCONTRACTOR.—A principal
27 may be a prime contractor or a subcontractor.

28 (13) PROGRAM.—The term “program” means the preferred surety
29 bond guarantee program.

30 (14) SMALL BUSINESS CONCERN.—The term “small business con-
31 cern” means a business concern that meets the size standard for the
32 primary industry in which the business concern and the affiliates of the
33 business concern are engaged, as determined by the Administrator in
34 accordance with the North American Industry Classification System.

35 (15) SUBCONTRACTOR.—The term “subcontractor” means a person
36 that contracts with a prime contractor or with another subcontractor
37 to perform a contract.

38 (16) SURETY.—The term “surety” means a person that—

39 (A) under the terms of a bid bond, undertakes to pay a sum
40 of money to the obligee if the principal breaches the conditions of
41 the bond;

1 (B) under the terms of a performance bond, undertakes to incur
2 the cost of fulfilling the terms of a contract if the principal
3 breaches the conditions of the contract;

4 (C) under the terms of a payment bond, undertakes to make
5 payment to all persons supplying labor and material in the pros-
6 ecution of the work provided for in the contract if the principal
7 fails to make prompt payment; or

8 (D) is an agent, independent agent, underwriter, or any other
9 person authorized to act on behalf of a person described in sub-
10 paragraph (A), (B), or (C).

11 **§ 321102. Surety bond guarantees and indemnification**
12 **agreements**

13 (a) GUARANTEE OF SURETY AGAINST LOSS FROM PRINCIPAL'S BREACH
14 OF BOND.—

15 (1) IN GENERAL.—The Administrator may, on such terms and con-
16 ditions as the Administrator may prescribe, guarantee and enter into
17 commitments to guarantee a surety against loss resulting from a
18 breach of the terms of a bond by a principal on any total work order
19 or contract amount that at the time of bond execution does not exceed
20 \$6,500,000, as adjusted for inflation in accordance with section 1908
21 of title 41.

22 (2) INCREASED AMOUNT IF NECESSARY.—The Administrator may
23 guarantee a surety under paragraph (1) for a total work order or con-
24 tract amount that does not exceed \$10,000,000 if a contracting officer
25 of a Federal agency certifies that a guarantee in the increased amount
26 is necessary.

27 (3) TERMS AND CONDITIONS.—The terms and conditions of guaran-
28 tees and commitments under paragraph (1) may vary from surety to
29 surety on the basis of the Administrator's experience with the particu-
30 lar surety.

31 (4) ELIGIBILITY.—A guarantee of a bond shall not be issued under
32 paragraph (1) unless—

33 (A) the person that would be principal under the bond is a small
34 business concern;

35 (B) the bond is required for the person to bid on a contract or
36 to serve as a prime contractor or subcontractor on a contract;

37 (C) the person is not able to obtain the bond on reasonable
38 terms and conditions without a guarantee under this section; and

39 (D)(i) there is a reasonable expectation that the principal will
40 perform the covenants and conditions of the contract with respect
41 to which the bond is required; and

1 (ii) the terms and conditions of the bond are reasonable in the
2 light of the risks involved and the extent of the surety's participa-
3 tion.

4 (5) PREFERRED SURETY BOND GUARANTEE PROGRAM.—

5 (A) IN GENERAL.—The Administrator may authorize a surety,
6 without further approval by the Administrator, to issue, monitor,
7 and service bonds that are subject to a guarantee under paragraph
8 (1).

9 (B) ACTION BY THE ADMINISTRATOR.—The Administrator shall
10 promptly act on an application from a surety to participate in the
11 preferred surety bond guarantee program, in accordance with cri-
12 teria and procedures established in regulations under subsection
13 (d).

14 (C) REDUCTION OF ALLOTMENT; TERMINATION.—The Adminis-
15 trator may reduce the allotment of bond guarantee authority or
16 terminate the participation of a preferred surety based on the rate
17 of participation of the preferred surety during the 4 most recent
18 fiscal year quarters compared with the median rate of participa-
19 tion by the other preferred sureties.

20 (b) INDEMNIFICATION OF PARTICIPATING SURETY AGAINST LOSS FROM
21 AVOIDING BREACH.—

22 (1) IN GENERAL.—In connection with the issuance of a guarantee
23 to a surety, the Administrator may enter into an indemnification agree-
24 ment with a participating surety to indemnify the participating surety
25 against a loss sustained by the participating surety in avoiding or at-
26 tempting to avoid a breach of the terms of a bond guaranteed by the
27 Administrator under subsection (a).

28 (2) DETERMINATION.—Before making any payment under this sub-
29 section, the Administrator shall determine that a breach of the terms
30 of the bond was imminent.

31 (3) APPROVAL.—A participating surety shall obtain approval from
32 the Administrator before making any payments under this subsection
33 unless the participating surety is a preferred surety.

34 (4) LIMITATION ON AMOUNT OF PAYMENT.—

35 (A) IN GENERAL.—Subject to subparagraph (B), no payment by
36 the Administrator under this subsection shall exceed 10 percent of
37 the contract price unless the Administrator determines that a
38 greater payment should be made as a result of a finding by the
39 Administrator that the participating surety's loss sustained in
40 avoiding or attempting to avoid the breach was necessary and rea-
41 sonable.

1 (B) MAXIMUM AMOUNT.—In no event shall the Administrator
2 pay a participating surety under this subsection an amount ex-
3 ceeding the guaranteed share of the bond available to the partici-
4 pating surety under subsection (a).

5 (c) AMOUNT OF LIABILITY OF THE ADMINISTRATOR.—A guarantee or in-
6 demnification agreement shall obligate the Administrator to pay to the par-
7 ticipating surety—

8 (1) in the case of a preferred surety, an amount not to exceed 70
9 percent of the amount of the loss incurred and paid by the preferred
10 surety; or

11 (2) in the case of a participating surety other than a preferred sur-
12 ety—

13 (A) an amount not to exceed 90 percent of the amount of the
14 loss incurred and paid by the participating surety (but in no event
15 may the Administrator make a duplicate payment under sub-
16 section (b) or any other provision of this section); or

17 (B) the amount that is equal to 90 percent of the loss incurred
18 and paid by the participating surety, if—

19 (i) the total amount of the contract at the time of execution
20 of the bond or bonds is \$100,000 or less; or

21 (ii) the bond was issued to a small business concern owned
22 and controlled by socially and economically disadvantaged in-
23 dividuals or to a qualified HUBZone small business concern.

24 (d) REGULATIONS.—

25 (1) IN GENERAL.—The Administrator may prescribe regulations for
26 participating sureties.

27 (2) CONTENTS.—The regulations under paragraph (1) shall require
28 a participating surety to meet standards established by the Adminis-
29 trator for underwriting, claim practices, and loss ratios.

30 (e) REIMBURSEMENT OF SURETY.—

31 (1) IN GENERAL.—Except as provided in paragraph (2), the Admin-
32 istrator shall reimburse a participating surety as provided in a guaran-
33 tee or indemnification agreement.

34 (2) NO LIABILITY.—Subject to paragraph (3), the Administrator
35 shall be relieved of liability (in whole or in part, at the discretion of
36 the Administrator) under a guarantee or indemnification agreement
37 if—

38 (A) the participating surety obtained the guarantee or indem-
39 nification agreement, or applied for reimbursement, by fraud or
40 material misrepresentation;

1 (B) the total contract amount at the time of execution of the
2 bond or bonds exceeds \$6,500,000;

3 (C) the participating surety has breached a material term or
4 condition of the guarantee agreement or indemnification agree-
5 ment; or

6 (D) the participating surety has substantially violated the regu-
7 lations prescribed under subsection (d).

8 (3) LIMITATION ON DENIAL OF LIABILITY.—In the case of a bond
9 made or executed with the prior approval of the Administrator, the Ad-
10 ministrator shall not deny liability to a surety based on material infor-
11 mation that was provided as part of the guarantee application.

12 (f) REIMBURSEMENT PROCEDURE.—The Administrator may, on such
13 terms and conditions as the Administrator may prescribe, establish a proce-
14 dure for reimbursing a participating surety for the paid losses of the partici-
15 pating surety billed each month, based on prior monthly payments to the
16 participating surety, with subsequent adjustments after such reimburse-
17 ment.

18 (g) REPORTING BY PARTICIPATING SURETIES; AUDITS.—

19 (1) REPORTING BY PARTICIPATING SURETIES.—A participating sur-
20 ety shall submit reports to the Administrator at such times and in such
21 form as the Administrator may require.

22 (2) AUDITS.—

23 (A) IN GENERAL.—The Administrator may at all reasonable
24 times audit, in the offices of a participating surety, all records rel-
25 evant to SBA's guarantee, commitments to guarantee, and indem-
26 nification agreements issued to or entered into with the participat-
27 ing surety under this section.

28 (B) PREFERRED SURETY BOND GUARANTEE PROGRAM PARTICI-
29 PANTS.—A preferred surety shall be audited at least once every
30 3 years by examiners selected and approved by the Administrator.

31 (h) ADMINISTRATIVE PROVISIONS.—The Administrator shall—

32 (1) administer the program on a prudent and economically justifiable
33 basis; and

34 (2) establish such fees for small business concerns and premiums for
35 participating sureties as the Administrator considers reasonable and
36 necessary, to be payable at such times and under such conditions as
37 the Administrator may determine.

38 **§ 321103. Surety bond guarantee fund**

39 (a) IN GENERAL.—There is created in the Treasury a separate fund for
40 guarantees, which shall be available to the Administrator without fiscal year
41 limitation as a revolving fund for the purposes of the program.

1 (b) DEPOSIT OF AMOUNTS RECEIVED BY THE ADMINISTRATOR.—All
2 amounts received by the Administrator (including any money, property, or
3 assets derived by the Administrator from operations in connection with the
4 program) shall be deposited in the fund.

5 (c) USE OF FUND.—All expenses and payments, excluding administrative
6 expenses, pursuant to operations of the Administrator under the program
7 shall be paid from the fund.

8 (d) APPROPRIATIONS.—Such sums as may be appropriated to the Fund
9 to carry out the programs authorized by this chapter shall be without fiscal
10 year limitation.

11 **Division D—Certified Development**
12 **Company Program**
13 **Chapter 331—Certified Development**
14 **Company Program**

Sec.

331101. Definitions.

331102. Establishment of program.

331103. Debenture guarantees.

331104. Private debenture sales.

331105. Pooling of debentures.

331106. Prohibition of acceptance of funding with certain conditions, priorities, restrictions,
or requirements.

331107. Accredited lenders program.

331108. Premier certified lenders program.

331109. Foreclosure and liquidation of loans.

15 **§ 331101. Definitions**

16 In this chapter:

17 (1) ACCREDITED LENDER.—The term “accredited lender” means a
18 qualified development company that is designated as an accredited
19 lender under section 331107 of this title.

20 (2) CERTIFIED DEVELOPMENT COMPANY.—The term “certified de-
21 velopment company” means a qualified development company that the
22 Administrator certifies as meeting criteria established under this chap-
23 ter to receive assistance under the program.

24 (3) COMMERCIAL LOAN.—The term “commercial loan” means a loan
25 from a private source.

26 (4) DEVELOPMENT COMPANY.—The term “development company”
27 means an enterprise that is incorporated under State law with the au-
28 thority to promote and assist the growth and development of small
29 business concerns in the area covered by the operations of the enter-
30 prise.

31 (5) GUARANTEED DEBENTURE.—The term “guaranteed debenture”
32 means a debenture that is guaranteed by the Administrator under the
33 program.

1 (6) PREMIER CERTIFIED LENDER.—The term “premier certified
2 lender” means a certified development company that is designated as
3 a premier certified lender under section 331108 of this title.

4 (7) PROGRAM.—The term “program” means the certified develop-
5 ment company program.

6 (8) PROJECT.—The term “project” means a project described in sec-
7 tion 331103(a)(1) of this title.

8 (9) QUALIFIED DEVELOPMENT COMPANY.—

9 (A) IN GENERAL.—The term “qualified development company”
10 means a development company that, as determined by the Admin-
11 istrator, has—

12 (i) a full-time professional staff;

13 (ii) professional management ability (including adequate
14 accounting, legal, and business-servicing abilities); and

15 (iii) a board of directors, or membership, that meets on a
16 regular basis to make management decisions for the develop-
17 ment company, including decisions relating to the making and
18 servicing of loans by the development company.

19 (B) DEVELOPMENT COMPANIES IN A RURAL AREA.—A develop-
20 ment company in a rural area that does not satisfy the require-
21 ments of clauses (i) and (ii) of subparagraph (A) shall be deemed
22 to satisfy those requirements if the development company con-
23 tracts with a certified development company that does satisfy
24 those requirements and is located in the same general area to pro-
25 vide the services described in those clauses.

26 (10) SMALL MANUFACTURER.—The term “small manufacturer”
27 means a small business concern—

28 (A) the primary business of which is classified in sector 31, 32,
29 or 33 of the North American Industry Classification System; and

30 (B) all of the production facilities of which are located in the
31 United States.

32 **§ 331102. Establishment of program**

33 There is established within SBA a certified development company pro-
34 gram for the purpose of fostering economic development and creating and
35 preserving job opportunities in both urban and rural areas by providing
36 long-term financing for small business concerns.

37 **§ 331103. Debenture guarantees**

38 (a) IN GENERAL.—

39 (1) AUTHORITY.—The Administrator may guarantee the timely pay-
40 ment of all principal and interest as scheduled on a debenture issued
41 by a certified development company the proceeds of which are used to

1 make a loan to a small business concern to be used for a project for
2 a sound business purpose, approved by the Administrator, of plant ac-
3 quisition, construction, conversion, or expansion (including land acqui-
4 sition).

5 (2) LIMITATION.—The Administrator shall not guarantee a debenture
6 for the purposes of making a loan described in paragraph (1) un-
7 less necessary funds for making the loan are not available to the cer-
8 tified development company from a private source on reasonable terms.

9 (3) TERMS AND CONDITIONS.—A debenture guarantee may be made
10 on such terms and conditions as the Administrator may by regulation
11 determine to be appropriate.

12 (4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full
13 faith and credit of the United States is pledged to the payment of all
14 amounts guaranteed under this subsection.

15 (5) SUBORDINATION.—A guaranteed debenture may be subordinated
16 by the Administrator to any other debenture, promissory note, or other
17 debt or obligation of the certified development company that issues the
18 debenture.

19 (b) ELIGIBILITY FOR ASSISTANCE.—

20 (1) ECONOMIC DEVELOPMENT OBJECTIVES.—

21 (A) DEFINITIONS.—In subclauses (IX) and (X) of subpara-
22 graph (B)(iii), terms have the meanings given the terms under the
23 Leadership in Energy and Environmental Design standard for
24 green building certification, as determined by the Administrator.

25 (B) ELIGIBILITY.—To be eligible for assistance under the pro-
26 gram, a certified development company shall demonstrate that the
27 project to be funded with the proceeds of a guaranteed debenture
28 is directed toward at least 1 of the following economic development
29 objectives:

30 (i) JOB CREATION OR RETENTION OBJECTIVE.—The cre-
31 ation of job opportunities within 2 years after completion of
32 the project, or the retention of jobs attributable to the
33 project, as provided in paragraph (3).

34 (ii) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE.—
35 Improvement of the economy of the local community, such as
36 stimulating other business development in the community,
37 bringing new income into the area, or assisting the commu-
38 nity in diversifying and stabilizing its economy.

39 (iii) PUBLIC POLICY OBJECTIVE.—The achievement of 1 or
40 more of the following public policy objectives:

41 (I) Business district revitalization.

- 1 (II) Expansion of exports.
- 2 (III) Expansion of minority business development or
3 women-owned business development.
- 4 (IV) Rural development.
- 5 (V) Expansion of small business concerns owned and
6 controlled by veterans, especially small business concerns
7 owned and controlled by service-disabled veterans.
- 8 (VI) Enhancement of economic competition, including
9 the advancement of technology, plan retooling, conver-
10 sion to robotics, and competition with imports.
- 11 (VII) Changes necessitated by Federal budget cut-
12 backs, including cutbacks in defense-related industries.
- 13 (VIII) Business restructuring arising from Federally
14 mandated standards or policies affecting the environment
15 or the safety and health of employees.
- 16 (IX) Reduction of energy consumption by at least 10
17 percent.
- 18 (X) Increased use of sustainable design, including—
19 (aa) designs that reduce the use of greenhouse
20 gas emitting fossil fuels; and
21 (bb) low-impact designs to produce buildings that
22 reduce the use of nonrenewable resources and mini-
23 mize environmental impact.
- 24 (XI) Plant, equipment, and process upgrades of re-
25 newable energy sources such as—
26 (aa) the small-scale production of energy for indi-
27 vidual buildings or communities consumption, com-
28 monly known as micropower; and
29 (bb) renewable fuels producers, including biodiesel
30 and ethanol producers.
- 31 (XII) Reduction of rates of unemployment in labor
32 surplus areas, as those areas are determined by the Sec-
33 retary of Labor.

34 (2) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE; PUBLIC POL-
35 ICY OBJECTIVE.—If eligibility is based on the criteria stated in clause
36 (ii) or (iii) of paragraph (1)(B), the project need not meet the job crea-
37 tion or job preservation criteria developed by the Administrator if the
38 overall portfolio of the development company meets or exceeds those job
39 creation or retention criteria.

40 (3) JOB CREATION OR RETENTION OBJECTIVE.—

1 (A) PROJECT STANDARD.—A project meets the job creation or
2 retention objective under paragraph (1)(B)(i) if the project cre-
3 ates or retains—

4 (i) 1 job for every \$65,000 guaranteed by the Adminis-
5 trator; or

6 (ii) in the case of a project of a small manufacturer, 1 job
7 for every \$100,000 guaranteed by the Administrator.

8 (B) PORTFOLIO STANDARD.—A project need not meet the
9 project standard under subparagraph (A) if—

10 (i) eligibility of the project is based on the community eco-
11 nomic improvement objective under paragraph (1)(B)(ii) or 1
12 or more of the public policy objectives under paragraph
13 (1)(B)(iii); and

14 (ii) after the loan is made for the project, the certified de-
15 velopment company's portfolio of outstanding guaranteed de-
16 bentures, excluding guaranteed debentures for loans to small
17 manufacturers, creates or retains—

18 (I) 1 job for every \$65,000 guaranteed by the Admin-
19 istrator; or

20 (II) in the case of a project in Alaska, Hawaii, a
21 State-designated enterprise zone, an empowerment zone,
22 an enterprise community, or labor surplus area, as deter-
23 mined by the Secretary of Labor, or in any other area
24 designated by the Administrator, 1 job for every \$75,000
25 guaranteed by the Administrator.

26 (4) WAIVER OF REQUIREMENTS.—

27 (A) IN GENERAL.—Under regulations prescribed by the Admin-
28 istrator, the Administrator may waive, on a case-by-case basis or
29 by regulation, any requirement of paragraph (3) (other than the
30 requirement that a calculation under paragraph (3)(B)(ii)(II) ex-
31 clude debentures for loans to small manufacturers).

32 (B) DOLLAR AMOUNTS.—The Administrator may not, in con-
33 nection with any waiver under subparagraph (A), adopt any dollar
34 amount that is lower than a dollar amount specified in paragraph
35 (3).

36 (c) CRITERIA FOR ASSISTANCE.—

37 (1) IN GENERAL.—A certified development company shall meet cri-
38 teria established by the Administrator, including such an extent of par-
39 ticipation to be required or amount of paid-in capital to be used in each
40 instance as the Administrator determines to be reasonable.

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1 (2) SMALL BUSINESS CONCERN FUNDS.—In the case of any project
2 of a small business concern financed under the program, the small
3 business concern (or its owners, stockholders, or affiliates) receiving as-
4 sistance through a body authorized by this chapter shall provide—

5 (A) at least 15 percent of the total financed cost of the project
6 if the small business concern has been in operation for a period
7 of 2 years or less or if the project involves the construction of a
8 limited-purpose or single-purpose building or other structure;

9 (B) at least 20 percent of the total financed cost of the project
10 if the project involves both of the conditions described in subpara-
11 graph (A); or

12 (C) an amount specified by the certified development company,
13 which shall be at least 10 percent of the total financed cost of the
14 project, if the project involves neither of the conditions described
15 in subparagraph (A).

16 (3) FUNDING.—

17 (A) IN GENERAL.—Funds necessary to meet the extent of par-
18 ticipation or amount of paid-in capital determined by the Adminis-
19 trator under paragraph (1) for a project of a small business con-
20 cern financed under the program may be derived, in whole or in
21 part, from—

22 (i) a State or local government;

23 (ii) a bank or other financial institution;

24 (iii) a foundation or other nonprofit institution; or

25 (iv) the small business concern (or its owners, stockholders,
26 or affiliates).

27 (B) 3D PARTY FUNDING REQUIREMENT.—Not less than 50 per-
28 cent of the total financed cost of a project described in subpara-
29 graph (A) of (B) of paragraph (2) shall come from 1 or more 3d
30 party sources described in clauses (i), (ii), and (iii) of subpara-
31 graph (A).

32 (C) SELLER FINANCING.—Financing provided by a seller of
33 property to a small business concern for a project may be used
34 to meet the requirements of this paragraph if the seller subordi-
35 nates the interest of the seller in the property to the debenture
36 guaranteed by the Administrator.

37 (4) COLLATERAL.—

38 (A) IN GENERAL.—The collateral provided by a small business
39 concern—

40 (i) shall generally include a subordinate lien position on the
41 property being financed under the program; and

1 (ii) is only 1 of the factors to be evaluated in the credit
2 determination.

3 (B) ADDITIONAL COLLATERAL.—Additional collateral shall be
4 required only if the Administrator determines, on a case-by-case
5 basis, that additional security is necessary to protect the interest
6 of the Government.

7 (C) APPRAISALS.—With respect to commercial real property
8 provided by a small business concern as collateral, an appraisal of
9 the property by a State-licensed or State-certified appraiser—

10 (i) shall be required by the Administrator before disburse-
11 ment of the loan if the estimated value of the property is
12 more than \$250,000; and

13 (ii) may be required by the Administrator or the certified
14 development company before disbursement of the loan, if—

15 (I) the estimated value of the property is \$250,000 or
16 less; and

17 (II) an appraisal is necessary for appropriate evalua-
18 tion of creditworthiness.

19 (5) LEASING.—

20 (A) IN GENERAL.—In the case of a project to construct a new
21 facility for a small business concern, up to 33 percent of the total
22 project may be leased, if reasonable projections of growth dem-
23 onstrate that the small business concern—

24 (i) will need additional space within 3 years after the date
25 of completion of the facility; and

26 (ii) will fully utilize the additional space within 10 years
27 after the date of completion of the facility.

28 (B) LIMITATION ON LEASING.—In addition to any portion of a
29 project of a small business concern permitted to be leased under
30 subparagraph (A), not to exceed 20 percent of the project may be
31 leased by the small business concern to 1 or more other tenants
32 if the small business occupies permanently and uses not less than
33 a total of 60 percent of the space in the project after the execution
34 of any leases authorized under this section.

35 (6) OWNERSHIP REQUIREMENTS.—

36 (A) OWNERSHIP BY SPOUSE UNDER COMMUNITY PROPERTY
37 LAW.—Ownership requirements to determine the eligibility of a
38 small business concern that applies for assistance under the pro-
39 gram shall be determined without regard to any ownership interest
40 of a spouse arising solely from the application of the community

1 property law of a State for purposes of determining marital inter-
2 ests.

3 (B) OWNERSHIP BY RELATIVES.—

4 (i) IN GENERAL.—The Administrator shall not decline to
5 issue a debenture guarantee for a project of a small business
6 concern on the ground that the ownership interests of the
7 small business concern and the ownership interests of the
8 property to be financed with the proceeds of a loan made with
9 the proceeds of the guaranteed debenture are not identical be-
10 cause 1 or more of the classes of relatives described in clause
11 (ii) have an ownership interest in the small business concern
12 or the property if the Administrator determines, on a case-
13 by-case basis, that the ownership interest, the guarantee, and
14 the proceeds of the loan will substantially benefit the small
15 business concern.

16 (ii) CLASSES OF RELATIVES.—The classes of relatives re-
17 ferred to in clause (i) are father, mother, son, daughter, wife,
18 husband, brother, or sister.

19 (7) PERMISSIBLE DEBT REFINANCING.—

20 (A) IN GENERAL.—Any financing approved under the program
21 may include a limited amount of debt refinancing.

22 (B) EXPANSIONS.—If a project involves expansion of a small
23 business concern, any amount of existing indebtedness that does
24 not exceed 50 percent of the project cost of the expansion may be
25 refinanced and added to the expansion cost if—

26 (i) the proceeds of the indebtedness were used to acquire
27 land, including a building situated on the land, to construct
28 a building on the land or to purchase equipment;

29 (ii) the existing indebtedness is collateralized by fixed as-
30 sets;

31 (iii) the existing indebtedness was incurred for the benefit
32 of the small business concern;

33 (iv) the financing under the program will be used only for
34 refinancing existing indebtedness or costs relating to the
35 project financed under the program;

36 (v) the financing under the program will provide a substan-
37 tial benefit to the borrower when prepayment penalties, fi-
38 nancing fees, and other financing costs are accounted for;

39 (vi) the borrower has been current on all payments due on
40 the existing debt for not less than 1 year preceding the date
41 of refinancing; and

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1 (vii) the financing under section 331104 of this title will
2 provide better terms or a better rate of interest than the ex-
3 isting indebtedness at the time of refinancing.

4 (d) DEBENTURE AMOUNT AND INTEREST.—

5 (1) MAXIMUM DEBENTURE AMOUNT.—The amount of a guaranteed
6 debenture shall not exceed the aggregate amount of the loans to be
7 made from the proceeds of the guaranteed debenture (other than any
8 excess attributable to the administrative costs of the loans).

9 (2) MINIMUM INTEREST RATE.—The interest rate on a guaranteed
10 debenture shall be not less than the rate of interest determined by the
11 Secretary of the Treasury for purposes of section 303104(b) of this
12 title.

13 (e) LOAN APPROVAL, AMOUNT, AND INTEREST RATE.—

14 (1) APPROVAL BY THE ADMINISTRATOR.—The Administrator shall
15 approve each loan made with the proceeds of a guaranteed debenture.

16 (2) MAXIMUM LOAN AMOUNT.—

17 (A) PERCENTAGE OF PROJECT COST.—The amount of a loan
18 made with the proceeds of a guaranteed debenture shall not exceed
19 the amount that is equal to 50 percent of the cost of the project
20 with respect to which the loan is made.

21 (B) DOLLAR AMOUNT.—

22 (i) IN GENERAL.—Except as provided in clause (ii), the
23 amount of a loan made with the proceeds of a guaranteed de-
24 benture shall not exceed \$5,000,000.

25 (ii) EXCEPTIONS.—

26 (I) PUBLIC POLICY OBJECTIVES.—The amount of a
27 loan for a project directed toward 1 or more of the public
28 policy objectives described in subsection (b)(1)(B)(iii)
29 shall not exceed \$5,000,000.

30 (II) SMALL MANUFACTURERS.—The amount of a loan
31 to a small manufacturer for any 1 project shall not ex-
32 ceed \$5,500,000.

33 (III) REDUCTION OF ENERGY CONSUMPTION.—The
34 amount of a loan for a project that reduces the borrow-
35 er's energy consumption by at least 10 percent shall not
36 exceed \$5,500,000.

37 (IV) GENERATION OF RENEWABLE ENERGY OR RE-
38 NEWABLE FUEL.—The amount of a loan for a project
39 that generates renewable energy or renewable fuel (such
40 as biodiesel or ethanol production) shall not exceed
41 \$5,500,000.

1 (f) COMMERCIAL LOAN INTEREST RATE.—

2 (1) PURPOSE.—The purpose of this subsection is to facilitate the or-
3 derly and necessary flow of long-term loans from certified development
4 companies to small business concerns.

5 (2) MAXIMUM INTEREST RATE.—Notwithstanding the provisions of
6 the constitution or laws of any State limiting the rate or amount of
7 interest that may be charged, taken, received, or reserved, the maxi-
8 mum legal rate of interest on any commercial loan that funds any por-
9 tion of the cost of the project financed under the program that is not
10 funded by a guaranteed debenture shall be a rate established by the
11 Administrator under paragraph (3).

12 (3) ESTABLISHMENT BY THE ADMINISTRATOR.—The Administrator
13 shall establish and publish quarterly a maximum legal interest rate for
14 any commercial loan that funds any portion of the cost of a project
15 financed under the program that is not funded by a guaranteed deben-
16 ture.

17 (g) FEES AND CHARGES.—

18 (1) LOAN FEES.—

19 (A) IN GENERAL.—With respect to each loan made with the
20 proceeds of a guaranteed debenture, the Administrator shall assess
21 and collect a fee, which shall be payable by the borrowing small
22 business concern, in an amount established annually by the Ad-
23 ministrator.

24 (B) AMOUNT.—

25 (i) IN GENERAL.—Except as provided in clause (ii), the
26 amount of a loan fee shall not exceed the lesser of—

27 (I) 0.9375 percent per year of the outstanding balance
28 of the loan; or

29 (II) the minimum amount necessary to reduce to zero
30 the cost (as defined in section 502 of the Federal Credit
31 Reform Act of 1990 (2 U.S.C. 661a)) to the Adminis-
32 trator of purchasing and guaranteeing debentures under
33 the program.

34 (ii) EXCEPTION.—

35 (I) IN GENERAL.—In the case of a loan made during
36 the 2-year period beginning on October 1, 2002, the
37 amount of a loan fee shall be 50 percent of the amount
38 established under clause (i), for the life of the loan.

39 (II) LIMITATION.—Subclause (I) shall be effective only
40 to the extent that funds are made available under appro-
41 priations Acts, which funds shall be used by the Admin-

1 istrator to offset the cost (as defined in section 502 of
2 the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))
3 of that subclause.

4 (C) USE OF PROCEEDS.—The Administrator shall use the pro-
5 ceeds of loan fees collected to offset the cost (as defined in section
6 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))
7 to the Administrator of making guarantees under the program.

8 (2) ADMINISTRATIVE EXPENSE CHARGES.—The Administrator may
9 impose a charge for administrative expenses with respect to a guaran-
10 teed debenture.

11 (3) PARTICIPATION FEES.—

12 (A) IN GENERAL.—The Administrator shall collect a 1-time fee
13 in an amount equal to 50 basis points on the total participation
14 in a project by an entity described in clause (i), (ii), or (iii) of sub-
15 section (c)(3)(A) if the participation will occupy a senior credit po-
16 sition to that of the certified development company.

17 (B) USE OF PROCEEDS.—All proceeds of the participation fee
18 shall be used to offset the cost (as defined in section 502 of the
19 Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Ad-
20 ministrator of making guarantees under the program.

21 (4) CERTIFIED DEVELOPMENT COMPANY FEES.—

22 (A) IN GENERAL.—The Administrator shall collect annually
23 from a certified development company a fee of 0.125 percent of
24 the outstanding principal balance of any guaranteed debenture ap-
25 proved by the Administrator on or after October 1, 1996.

26 (B) DERIVATION.—The fee under subparagraph (A) shall be de-
27 rived from the servicing fees collected by the certified development
28 company pursuant to regulation and not from any additional fee
29 imposed on a small business concern.

30 (C) USE OF PROCEEDS.—All proceeds of the certified develop-
31 ment company fee shall be used to offset the cost (as defined in
32 section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C.
33 661a)) to the Administrator of making guarantees under the pro-
34 gram.

35 (5) APPLICABILITY.—The fees authorized by this subsection apply to
36 financings approved by the Administrator on or after October 1, 1996.

37 (h) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits re-
38 ceived and retained by the Administrator under the program shall be in-
39 cluded in the calculations made by the Director of the Office of Manage-
40 ment and Budget to offset the cost (as defined in section 502 of the Federal

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1 Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of pur-
2 chasing and guaranteeing debentures under the program.

3 (i) REQUIRED ACTIONS ON DEFAULT.—

4 (1) INITIAL ACTIONS.—Not later than the 45th day after the date
5 on which a payment on a loan funded through a guaranteed debenture
6 is due and not received, the Administrator shall—

7 (A) take all necessary steps to bring the loan current; or

8 (B) implement a formal written deferral agreement.

9 (2) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than
10 the 65th day after the date on which a payment on a loan described
11 in paragraph (1) is due and not received, and absent a formal written
12 deferral agreement, the Administrator shall take all necessary steps to
13 purchase or accelerate the guaranteed debenture.

14 (3) PREPAYMENT PENALTIES.—With respect to the portion of a
15 project derived from funds described in subsection (c)(3), the Adminis-
16 trator—

17 (A) shall negotiate the elimination of any prepayment penalties
18 or late fees on a defaulted loan made before September 30, 1996;

19 (B) shall not pay any prepayment penalty or late fee on the de-
20 fault-based purchase of a loan issued after September 30, 1996;
21 and

22 (C) for any project financed after September 30, 1996, shall not
23 pay any default interest rate higher than the interest rate on the
24 note prior to the date of default.

25 **§ 331104. Private debenture sales**

26 (a) IN GENERAL.—Notwithstanding any other law (including a regula-
27 tion), all guaranteed debentures shall be sold to investors, publicly or by pri-
28 vate placement.

29 (b) FEDERAL FINANCING BANK.—Nothing in any provision of law au-
30 thORIZES the Federal Financing Bank to acquire—

31 (1) any obligation the payment of principal or interest on which at
32 any time has been guaranteed in whole or in part under the program
33 that is being sold under subsection (a);

34 (2) any obligation that is an interest in an obligation described in
35 paragraph (1); or

36 (3) any obligation that is secured by, or substantially all of the value
37 of which is attributable to, an obligation described in paragraph (1) or
38 (2).

39 **§ 331105. Pooling of debentures**

40 (a) ISSUANCE.—

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1 (1) IN GENERAL.—The Administrator may issue trust certificates
2 representing ownership of all or a fractional part of a guaranteed de-
3 benture.

4 (2) TRUST OR POOL.—A trust certificate issued under paragraph (1)
5 shall be based on and backed by a trust or pool approved by the Ad-
6 ministrator and composed solely of guaranteed debentures.

7 (b) GUARANTEE.—

8 (1) IN GENERAL.—The Administrator may, on such terms and con-
9 ditions as the Administrator considers appropriate, guarantee the time-
10 ly payment of the principal of and interest on trust certificates issued
11 by the Administrator (or an agent of the Administrator) for purposes
12 of this section.

13 (2) LIMITATION.—A guarantee shall be limited to the extent of prin-
14 cipal and interest on the guaranteed debentures that compose the trust
15 or pool.

16 (3) PREPAYMENT ON REDEMPTION.—

17 (A) REDUCTION OF GUARANTEE.—If a guaranteed debenture in
18 a trust or pool is prepaid, voluntarily or in the event of default,
19 the guarantee of timely payment of principal and interest on the
20 trust certificates shall be reduced in proportion to the amount of
21 principal and interest that the prepaid guaranteed debenture rep-
22 resents in the trust or pool.

23 (B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a
24 prepaid or defaulted guaranteed debenture shall accrue and be
25 guaranteed by the Administrator only through the date of pay-
26 ment on the guarantee.

27 (C) CALL OF TRUST CERTIFICATE.—During the term of a trust
28 certificate, the trust certificate may be called for redemption due
29 to prepayment or default of all guaranteed debentures constituting
30 the trust or pool.

31 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith
32 and credit of the United States is pledged to the payment of all amounts
33 that may be required to be paid under any guarantee of a trust certificate
34 issued by the Administrator (or an agent of the Administrator) under this
35 section.

36 (d) FEES.—

37 (1) ADMINISTRATOR.—The Administrator shall not collect any fee
38 for a guarantee under this section.

39 (2) AGENT OF THE ADMINISTRATOR.—This subsection does not pre-
40 clude an agent of the Administrator from collecting a fee approved by

1 the Administrator for performing the functions described in subsection
2 (f)(2).

3 (e) SUBROGATION RIGHTS; OWNERSHIP RIGHTS IN GUARANTEED DE-
4 BENTURES.—

5 (1) SUBROGATION.—If the Administrator pays a claim under a guar-
6 antee issued under this section, the Administrator shall be subrogated
7 fully to the rights satisfied by the payment.

8 (2) OWNERSHIP RIGHTS IN GUARANTEED DEBENTURES.—No Fed-
9 eral, State, or local law shall preclude or limit the exercise by the Ad-
10 ministrator of the Administrator's ownership rights in the guaranteed
11 debentures constituting the trust or pool against which the trust certifi-
12 cates are issued.

13 (f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEAL-
14 ERS.—

15 (1) CENTRAL REGISTRATION.—The Administrator shall provide for
16 a central registration of all trust certificates sold pursuant to this sec-
17 tion.

18 (2) AGENT.—

19 (A) IN GENERAL.—The Administrator shall contract with an
20 agent to carry out on behalf of the Administrator—

21 (i) the central registration functions under this section; and

22 (ii) the issuance of trust certificates to facilitate poolings.

23 (B) BOND OR INSURANCE.—The agent under subparagraph (A)
24 shall provide a fidelity bond or insurance in such amounts as the
25 Administrator determines to be necessary to fully protect the in-
26 terests of the Government.

27 (3) DISCLOSURE.—The Administrator shall require a seller to dis-
28 close to a purchaser of a trust certificate issued under this section, be-
29 fore the sale, information on the terms, conditions, and yield of the
30 trust certificate.

31 (4) REGULATION OF BROKERS AND DEALERS.—The Administrator
32 may regulate brokers and dealers in trust certificates sold under this
33 section.

34 (5) FORM OF REGISTRATION.—This subsection does not preclude the
35 use of a book-entry or other electronic form of registration for trust
36 certificates.

37 **§ 331106. Prohibition of acceptance of funding with certain**
38 **conditions, priorities, restrictions, or requirements**

39 Notwithstanding any other provision of law, a certified development com-
40 pany shall not accept funding from any source (including a Federal agency)
41 if the funding—

1 (1) includes any condition, priority, or restriction on the type of
2 small business concern to which the certified development company
3 may provide financial assistance under the program; or

4 (2) includes any condition or imposes any requirement, directly or
5 indirectly, on any recipient of assistance under the program.

6 **§ 331107. Accredited lenders program**

7 (a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as
8 part of the program an accredited development company program for quali-
9 fied development companies that meet the requirements of subsection (b).

10 (b) REQUIREMENTS.—The Administrator may designate a qualified devel-
11 opment company as an accredited lender if the qualified development com-
12 pany—

13 (1) has been an active participant in the program for not less than
14 the preceding 12 months;

15 (2) has well-trained, qualified personnel who are knowledgeable in
16 SBA's lending policies and procedures for the program;

17 (3) has the ability to process, close, and service financing for plant
18 and equipment under the program;

19 (4) has a loss rate on the qualified development company's debent-
20 tures that is reasonable and acceptable to the Administrator;

21 (5) has a history of submitting to the Administrator complete and
22 accurate debenture guarantee application packages; and

23 (6) has demonstrated the ability to serve small business credit needs
24 for financing plant and equipment through the program.

25 (c) EXPEDITED PROCESSING OF LOAN APPLICATIONS.—The Adminis-
26 trator shall develop an expedited procedure for processing a loan application
27 or servicing action submitted by an accredited lender.

28 (d) SUSPENSION OR REVOCATION OF DESIGNATION.—

29 (1) IN GENERAL.—The Administrator may suspend or revoke the
30 designation of a qualified development company as an accredited lender
31 if the Administrator determines that—

32 (A) the qualified development company has not continued to
33 meet the criteria for eligibility under subsection (b); or

34 (B) the qualified development company has failed to adhere to
35 the Administrator's regulations or is violating any other applicable
36 provision of law.

37 (2) EFFECT.—A suspension or revocation under paragraph (1) shall
38 not affect any outstanding debenture guarantee.

1 **§ 331108. Premier certified lenders program**

2 (a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as
3 part of the program a premier certified lenders program for certified devel-
4 opment companies that meet the requirements of subsection (b).

5 (b) REQUIREMENTS.—

6 (1) APPLICATION.—To be eligible to participate in the premier cer-
7 tified lenders program, a certified development company shall submit
8 to the Administrator an application at such time, in such manner, and
9 containing such information as the Administrator may require.

10 (2) DESIGNATION.—The Administrator may designate a certified de-
11 velopment company as a premier certified lender if—

12 (A) the certified development company is an active certified de-
13 velopment company in good standing;

14 (B) the certified development company has been an active par-
15 ticipant in the accredited lenders program during the entire 12-
16 month period preceding the date on which the certified develop-
17 ment company submits an application under paragraph (1);

18 (C) the certified development company has a history of—

19 (i) submitting to the Administrator adequately analyzed de-
20 benture guarantee application packages; and

21 (ii) properly closing loans under the program and servicing
22 its loan portfolio;

23 (D) the certified development company agrees to assume and to
24 reimburse the Administrator—

25 (i) for 10 percent of any loss sustained by the Adminis-
26 trator as a result of default by the certified development com-
27 pany in the payment of principal or interest on a guaranteed
28 debenture issued by the certified development company; or

29 (ii) for 15 percent of the loss, if the loss is attributable to
30 a guaranteed debenture issued by the certified development
31 company during any period for which an election is in effect
32 under subsection (c)(8) for the certified development com-
33 pany; and

34 (E) the Administrator determines, with respect to the certified
35 development company, that the loss reserve established under sub-
36 section (c) is sufficient for the certified development company to
37 meet its obligations to protect the Federal Government from risk
38 of loss.

39 (3) WAIVER OF REQUIREMENT.—The Administrator may waive the
40 requirement of paragraph (2)(B) with respect to a certified develop-

1 ment company if the certified development company is qualified to par-
2 ticipate in the accredited lenders program.

3 (4) APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Admin-
4 istrator may revoke the designation of a certified development company
5 as a premier certified lender under this section at any time, if the Ad-
6 ministrator determines that the certified development company does not
7 meet any requirement described in subparagraphs (A) to (E) of para-
8 graph (2).

9 (c) LOSS RESERVE.—

10 (1) IN GENERAL.—A premier certified lender shall establish a loss
11 reserve for financing approved under this section.

12 (2) AMOUNT.—The amount of a loss reserve under paragraph (1)
13 shall be 10 percent of the amount of the premier certified lender's ex-
14 posure, as determined under subsection (b)(2)(D).

15 (3) ASSETS.—A loss reserve under paragraph (1) shall be comprised
16 of—

17 (A) segregated funds on deposit in 1 or more accounts with 1
18 or more federally insured depository institutions selected by the
19 premier certified lender, subject to a collateral assignment in favor
20 of, and in a format acceptable to, the Administrator;

21 (B) 1 or more irrevocable letters of credit, with a collateral as-
22 signment in favor of, and a commercially reasonable format ac-
23 ceptable to, the Administrator; or

24 (C) any combination of the assets described in subparagraphs
25 (A) and (B).

26 (4) CONTRIBUTIONS.—A premier certified lender shall make con-
27 tributions to a loss reserve under paragraph (1) in the following
28 amounts and at the following intervals:

29 (A) 50 percent when a debenture is closed.

30 (B) 25 percent additional not later than 1 year after a deben-
31 ture is closed.

32 (C) 25 percent additional not later than 2 years after a deben-
33 ture is closed.

34 (5) REIMBURSEMENT OF THE ADMINISTRATOR FOR LOSS.—If a loss
35 is sustained by the Administrator, any portion of the loss reserve, and
36 other funds provided by the premier certified lender as necessary, may
37 be used to reimburse the Administrator for the premier certified lend-
38 er's share of the loss as provided in subsection (b)(2)(D) of this sec-
39 tion.

40 (6) REPLACEMENT OF USED FUNDS.—If a premier certified lender
41 uses funds in its loss reserve, the premier certified lender shall replace

1 an equivalent amount of funds in the loss reserve not later than 30
2 days after the date of the use.

3 (7) WITHDRAWALS.—The Administrator shall allow a premier cer-
4 tified lender to withdraw from its loss reserve amounts attributable to
5 any debenture that is repaid.

6 (d) SALE OF CERTAIN DEFAULTED LOANS.—

7 (1) NOTICE.—

8 (A) IN GENERAL.—If, on default in repayment, the Adminis-
9 trator acquires a loan guaranteed under this section and identifies
10 the loan for inclusion in a bulk asset sale of defaulted or repur-
11 chased loans or other financings, the Administrator shall give
12 prior notice of the inclusion of the loan in the bulk asset sale to
13 any certified development company that has a contingent liability
14 under this section.

15 (B) TIMING.—The notice shall be given to the certified develop-
16 ment company as soon as possible after the financing is identified,
17 but not less than 90 days before the date on which the Adminis-
18 trator first makes any records on the financing available for exam-
19 ination by prospective purchasers prior to its offering in a package
20 of loans for bulk sale.

21 (2) LIMITATION.—The Administrator shall not offer a loan described
22 in paragraph (1) as part of a bulk sale unless the Administrator—

23 (A) provides prospective purchasers with the opportunity to ex-
24 amine the Administrator's records with respect to the loan; and

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

26 (e) LOAN APPROVAL AUTHORITY.—

27 (1) IN GENERAL.—Notwithstanding section 331103(e)(1) of this
28 title, and subject to such terms and conditions as the Administrator
29 may establish, the Administrator may—

30 (A) permit a premier certified lender to approve, authorize,
31 close, service, foreclose, litigate (except that the Administrator
32 may monitor the conduct of any such litigation to which a premier
33 certified lender is a party), and liquidate loans that are funded
34 with the proceeds of a debenture issued by the premier certified
35 lender; and

36 (B) authorize the guarantee of such a debenture.

37 (2) SCOPE OF REVIEW.—The approval of a loan by a premier cer-
38 tified lender shall be subject to final approval as to eligibility of any
39 guarantee by the Administrator under section 331103 of this title, but
40 such final approval shall not include review of decisions by the lender

1 involving creditworthiness, loan closing, or compliance with legal re-
2 quirements imposed by law (including a regulation).

3 (f) REVIEW.—

4 (1) IN GENERAL.—After the issuance and sale of debentures under
5 this section, the Administrator, at intervals of not greater than 12
6 months, shall review the financings made by each premier certified
7 lender.

8 (2) MATTERS TO BE REVIEWED.—A review shall include a premier
9 certified lender's credit decisions and general compliance with the eligi-
10 bility requirements for each financing approved under the premier cer-
11 tified lenders program.

12 (3) CONSIDERATION OF FINDINGS.—The Administrator shall con-
13 sider the findings of the review in carrying out subsection (g), but the
14 review shall not affect any outstanding debenture guarantee.

15 (g) SUSPENSION OR REVOCATION.—

16 (1) IN GENERAL.—The designation of a certified development com-
17 pany as a premier certified lender may be suspended or revoked if the
18 Administrator determines that the certified development company—

19 (A) has not continued to meet the criteria for eligibility under
20 subsection (b);

21 (B) has not established or maintained the loss reserve required
22 under subsection (c);

23 (C) is failing to adhere to the Administrator's regulations; or

24 (D) is violating any other applicable provision of law.

25 (2) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or rev-
26 ocation under this subsection shall not affect any outstanding deben-
27 ture guarantee.

28 (h) PROGRAM GOALS.—A certified development company that is des-
29 ignated as a premier certified lender shall establish a goal of processing a
30 minimum of not less than 50 percent of the loan applications that the cer-
31 tified development company receives for assistance under the premier cer-
32 tified lenders program.

33 **§ 331109. Foreclosure and liquidation of loans**

34 (a) DELEGATION OF AUTHORITY.—The Administrator shall delegate to a
35 qualified development company that meets the eligibility requirements of
36 subsection (b)(1) the authority to foreclose and liquidate, or to otherwise
37 treat in accordance with this section, defaulted loans in its portfolio that
38 are funded with the proceeds of guaranteed debentures.

39 (b) ELIGIBILITY FOR DELEGATION.—

40 (1) REQUIREMENTS.—A qualified development company shall be eli-
41 gible for a delegation of authority under subsection (a) if—

- 1 (A) the qualified development company—
2 (i) participated in the loan liquidation pilot program under
3 section 204 of the Small Business Programs Improvement
4 Act of 1996 (110 Stat. 3009–736), as in effect on April 8,
5 2007;
6 (ii) is participating in the premier certified lenders pro-
7 gram; or
8 (iii) during the 3 fiscal years immediately prior to seeking
9 such a delegation, has made an average of not less than 10
10 loans per year that are funded with the proceeds of guaran-
11 teed debentures; and
- 12 (B) the qualified development company—
13 (i) has 1 or more employees—
14 (I) who have not less than 2 years of substantive deci-
15 sionmaking experience in administering the liquidation
16 and workout of problem loans secured in a manner sub-
17 stantially similar to loans funded with the proceeds of
18 guaranteed debentures; and
19 (II) who have completed a training program on loan
20 liquidation developed by the Administrator in conjunction
21 with qualified development companies that meet the re-
22 quirements of this paragraph; or
23 (ii) submits to the Administrator documentation dem-
24 onstrating that the qualified development company has con-
25 tracted with a qualified 3d party to perform any liquidation
26 activities and secures the approval of the contract by the Ad-
27 ministrator with respect to the qualifications of the contractor
28 and the terms and conditions of liquidation activities.

29 (2) CONFIRMATION.—

30 (A) EXAMINATION.—On request, the Administrator shall exam-
31 ine the qualifications of a qualified development company de-
32 scribed in subsection (a) to determine whether the qualified devel-
33 opment company is eligible for the delegation of authority under
34 subsection (a).

35 (B) DETERMINATION OF INELIGIBILITY.—If the Administrator
36 determines that a qualified development company is not eligible,
37 the Administrator shall provide the qualified development company
38 with the reasons for ineligibility.

39 (c) SCOPE OF DELEGATED AUTHORITY.—

1 (1) IN GENERAL.—A qualified development company to which the
2 Administrator delegates authority under subsection (a) may, with re-
3 spect to any loan described in subsection (a)—

4 (A) perform all liquidation and foreclosure functions, including
5 the purchase in accordance with this subsection of any other in-
6 debtedness secured by the property securing the loan, in a reason-
7 able and sound manner according to commercially accepted prac-
8 tices, pursuant to a liquidation plan approved in advance by the
9 Administrator under paragraph (2)(A);

10 (B) litigate any matter relating to the performance of the func-
11 tions described in subparagraph (A), except that the Adminis-
12 trator may—

13 (i) defend or bring any claim if—

14 (I) the outcome of the litigation may adversely affect
15 the Administrator’s management of the program; or

16 (II) the Administrator is entitled to legal remedies not
17 available to a qualified development company, and those
18 remedies will benefit the Administrator or the qualified
19 development company; or

20 (ii) oversee the conduct of any such litigation; and

21 (C) take other appropriate actions to mitigate loan losses in lieu
22 of total liquidation or foreclosures, including the restructuring of
23 a loan in accordance with prudent loan servicing practices and
24 pursuant to a workout plan approved in advance by the Adminis-
25 trator under paragraph (2)(C).

26 (2) APPROVAL BY THE ADMINISTRATOR.—

27 (A) LIQUIDATION PLAN.—

28 (i) SUBMISSION.—Before carrying out functions described
29 in paragraph (1)(A), a qualified development company shall
30 submit to the Administrator a proposed liquidation plan.

31 (ii) ACTION BY THE ADMINISTRATOR ON PROPOSED LIQ-
32 UIDATION PLAN.—

33 (I) TIMING.—Not later than 15 business days after a
34 liquidation plan is received by the Administrator under
35 clause (i), the Administrator shall approve or reject the
36 liquidation plan.

37 (II) NOTICE OF NO DECISION.—With respect to any
38 liquidation plan that cannot be approved or denied with-
39 in the 15-day period required by subclause (I), the Ad-
40 ministrator shall within that period provide in accord-

1 ance with subparagraph (E) notice to the qualified devel-
2 opment company that submitted the liquidation plan.

3 (iii) ROUTINE ACTIONS.—In carrying out functions de-
4 scribed in paragraph (1)(A), a qualified development company
5 may undertake routine actions not addressed in a liquidation
6 plan without obtaining additional approval from the Adminis-
7 trator.

8 (B) PURCHASE OF INDEBTEDNESS.—

9 (i) IN GENERAL.—In carrying out functions described in
10 paragraph (1)(A), a qualified development company shall sub-
11 mit to the Administrator a request for written approval before
12 committing the Administrator to the purchase of any other
13 indebtedness secured by the property securing a defaulted
14 loan.

15 (ii) ACTION BY THE ADMINISTRATOR ON REQUEST.—

16 (I) TIMING.—Not later than 15 business days after re-
17 ceiving a request under clause (i), the Administrator
18 shall approve or deny the request.

19 (II) NOTICE OF NO DECISION.—With respect to any
20 request that cannot be approved or denied within the 15-
21 day period required by subclause (I), the Administrator
22 shall within that period provide in accordance with sub-
23 paragraph (E) notice to the qualified development com-
24 pany that submitted the request.

25 (C) WORKOUT PLAN.—

26 (i) IN GENERAL.—In carrying out functions described in
27 paragraph (1)(C), a qualified development company shall sub-
28 mit to the Administrator a proposed workout plan.

29 (ii) ACTION BY THE ADMINISTRATOR ON PROPOSED WORK-
30 OUT PLAN.—

31 (I) TIMING.—Not later than 15 business days after a
32 workout plan is received by the Administrator under
33 clause (i), the Administrator shall approve or reject the
34 workout plan.

35 (II) NOTICE OF NO DECISION.—With respect to any
36 workout plan that cannot be approved or denied within
37 the 15-day period required by subclause (I), the Admin-
38 istrator shall, within that period, provide in accordance
39 with subparagraph (E) notice to the qualified develop-
40 ment company that submitted the workout plan.

1 (D) COMPROMISE OF INDEBTEDNESS.—In carrying out func-
2 tions described in paragraph (1)(A), a qualified development com-
3 pany may—

4 (i) consider an offer made by an obligor to compromise the
5 debt for less than the full amount owing; and

6 (ii) pursuant to such an offer, release any obligor or other
7 party contingently liable, if the qualified development com-
8 pany secures the written approval of the Administrator.

9 (E) CONTENTS OF NOTICE OF NO DECISION.—A notice provided
10 by the Administrator under subparagraph (A)(ii)(II), (B)(ii)(II),
11 or (C)(ii)(II)—

12 (i) shall be in writing;

13 (ii) shall state the specific reason for the Administrator's
14 inability to act on a liquidation plan, request, or workout
15 plan;

16 (iii) shall include an estimate of the additional time re-
17 quired by the Administrator to act on the liquidation plan, re-
18 quest, or workout plan; and

19 (iv) if the Administrator cannot act because insufficient in-
20 formation or documentation was provided by the qualified de-
21 velopment company that submitted the liquidation plan, re-
22 quest, or workout plan, shall specify the nature of such addi-
23 tional information or documentation.

24 (3) CONFLICT OF INTEREST.—In carrying out functions described in
25 paragraph (1), a qualified development company shall take no action
26 that would result in an actual or apparent conflict of interest between
27 the qualified development company (or any employee of the qualified
28 development company) and any 3d party lender, associate of a 3d party
29 lender, or any other person participating in a liquidation, foreclosure,
30 or loss mitigation action.

31 (d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administrator
32 may revoke or suspend a delegation of authority under this section to a
33 qualified development company if the Administrator determines that the
34 qualified development company—

35 (1) does not meet the requirements of subsection (b)(1);

36 (2) has violated any applicable regulation of the Administrator or
37 any other applicable law; or

38 (3) fails to comply with any reporting requirement that may be es-
39 tablished by the Administrator relating to the carrying out of functions
40 described in this section.

1 **Subtitle IV—Miscellaneous**
2 **Chapter 401—PRIME Program**

Sec.

- 401101. Definitions.
- 401102. Establishment of program.
- 401103. Uses of assistance.
- 401104. Allocation of assistance; subgrants.
- 401105. Matching requirement.
- 401106. Applications for assistance.
- 401107. Recordkeeping.
- 401108. Implementation.
- 401109. Authorization of appropriations.

3 **§ 401101. Definitions**

4 In this chapter:

5 (1) CAPACITY BUILDING SERVICE.—The term “capacity building
6 service” means a service provided to an organization that is, or that
7 is in the process of becoming, a microenterprise development organiza-
8 tion or program, for the purpose of enhancing its ability to provide
9 training and services to disadvantaged entrepreneurs.

10 (2) COLLABORATIVE.—The term “collaborative” means 2 or more
11 nonprofit entities that agree to act jointly as a qualified organization
12 under the program.

13 (3) DISADVANTAGED ENTREPRENEUR.—The term “disadvantaged
14 entrepreneur” means a microentrepreneur that is—

15 (A) a low-income person;

16 (B) a very low-income person; or

17 (C) an entrepreneur that lacks adequate access to capital or
18 other resources essential for business success, or is economically
19 disadvantaged, as determined by the Administrator.

20 (4) INDIAN TRIBE.—The term “Indian tribe” has the meaning given
21 the term in section 103 of the Community Development Banking and
22 Financial Institutions Act of 1994 (12 U.S.C. 4702).

23 (5) INTERMEDIARY.—The term “intermediary” means a private,
24 nonprofit entity that seeks to serve qualified organizations.

25 (6) LOW-INCOME PERSON.—The term “low-income person” means a
26 person having income described in the definition of “low-income” in
27 section 103 of the Community Development Banking and Financial In-
28 stitutions Act of 1994 (12 U.S.C. 4702).

29 (7) MICROENTERPRISE.—The term “microenterprise” means a sole
30 proprietorship, partnership, or corporation that—

31 (A) has fewer than 5 employees; and

32 (B) generally lacks access to conventional loans, equity, or other
33 banking services.

1 (8) MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PRO-
2 GRAM.—The term “microenterprise development organization or pro-
3 gram” means a nonprofit entity (including a community development
4 corporation or other nonprofit development organization or a social
5 service organization), or a program administered by such an entity,
6 that provides services to disadvantaged entrepreneurs.

7 (9) MICROENTREPRENEUR.—The term “microentrepreneur” means
8 the owner or developer of a microenterprise.

9 (10) PROGRAM.—The term “program” means the PRIME program.

10 (11) QUALIFIED ORGANIZATION.—The term “qualified organization”
11 means—

12 (A) a nonprofit microenterprise development organization or
13 program (or a group or collaborative thereof) that has a dem-
14 onstrated record of delivering microenterprise services to disadvan-
15 taged entrepreneurs;

16 (B) an intermediary;

17 (C) a microenterprise development organization or program that
18 is accountable to a local community, working in conjunction with
19 a State or local government or Indian tribe; or

20 (D) an Indian tribe acting on its own, if the Indian tribe cer-
21 tifies that no private organization or program referred to in this
22 paragraph exists within its jurisdiction.

23 (12) TRAINING AND TECHNICAL ASSISTANCE.—The term “training
24 and technical assistance” means service and support provided to a dis-
25 advantaged entrepreneur, such as assistance for the purpose of enhanc-
26 ing business planning, marketing, management, financial management
27 skills, and assistance for the purpose of accessing financial services.

28 (13) VERY LOW-INCOME PERSON.—The term “very low-income per-
29 son” means a person having an income, adjusted for family size, of not
30 more than 150 percent of the poverty line (as defined in section 673
31 of the Community Services Block Grant Act (42 U.S.C. 9902), includ-
32 ing any revision required by that section).

33 **§ 401102. Establishment of program**

34 The Administrator shall establish a microenterprise technical assistance
35 and capacity building grant program, to be known as the program for in-
36 vestment in microenterprise or the PRIME program, to provide assistance
37 in the form of grants to qualified organizations in accordance with this
38 chapter.

39 **§ 401103. Uses of assistance**

40 A qualified organization shall use a grant made under the program—

1 (1) to provide training and technical assistance to disadvantaged en-
2 trepreneurs;

3 (2) to provide training and capacity building services to microenter-
4 prise development organizations and programs and groups of such or-
5 ganizations to assist the organizations and programs in developing
6 microenterprise training and services;

7 (3) to aid in researching and developing the best practices in the
8 field of microenterprise and technical assistance programs for disadvan-
9 tagged entrepreneurs; and

10 (4) for such other activities as the Administrator determines are con-
11 sistent with the purposes of the program.

12 **§ 401104. Allocation of assistance; subgrants**

13 (a) ALLOCATION OF ASSISTANCE.—

14 (1) IN GENERAL.—The Administrator shall allocate assistance under
15 the program to ensure that—

16 (A) activities described in section 401103(1) of this title are
17 funded using not less than 75 percent of amounts made available
18 for such assistance; and

19 (B) activities described in section 401103(2) of this title are
20 funded using not less than 15 percent of amounts made available
21 for such assistance.

22 (2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may re-
23 ceive more than 10 percent of the total funds appropriated for the pro-
24 gram in a single fiscal year.

25 (b) TARGETED ASSISTANCE.—The Administrator shall ensure that not
26 less than 50 percent of the grants made under the program are used to ben-
27 efit very low-income persons, including those residing on Indian reserva-
28 tions.

29 (c) SUBGRANTS.—

30 (1) IN GENERAL.—A qualified organization receiving assistance
31 under the program may provide grants using that assistance to quali-
32 fied small and emerging microenterprise organizations and programs,
33 subject to such regulations as the Administrator determines to be ap-
34 propriate.

35 (2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 per-
36 cent of the amount of assistance received by a qualified organization
37 under the program may be used for administrative expenses in connec-
38 tion with the making of subgrants under paragraph (1).

39 (d) DIVERSITY.—In making grants under the program, the Administrator
40 shall ensure that grant recipients include both large and small microenter-

1 prise organizations, serving urban, rural, and Indian tribal communities
2 with diverse populations.

3 (e) PROHIBITION OF PREFERENTIAL CONSIDERATION OF CERTAIN SBA
4 PROGRAM PARTICIPANTS.—In making grants under the program, the Ad-
5 ministrator shall ensure that any application made by a qualified organiza-
6 tion that is a participant in the microloan program does not receive pref-
7 erential consideration over applications from other qualified organizations
8 that are not participants in the microloan program.

9 **§ 401105. Matching requirement**

10 (a) IN GENERAL.—Financial assistance under the program shall be
11 matched with funds from sources other than the Federal Government in the
12 amount of not less than 50 cents for each dollar provided by the Adminis-
13 trator.

14 (b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from
15 loan sources, and in-kind resources of a grant recipient from public or pri-
16 vate sources may be used to comply with the matching requirement under
17 subsection (a).

18 (c) EXCEPTION.—

19 (1) IN GENERAL.—In the case of an applicant for assistance under
20 the program with severe constraints on available sources of matching
21 funds, the Administrator may reduce or eliminate the matching re-
22 quirement under subsection (a).

23 (2) LIMITATION.—Not more than 10 percent of the total funds made
24 available to carry out the program for any fiscal year may be excepted
25 under paragraph (1) from the matching requirement under subsection
26 (a).

27 **§ 401106. Applications for assistance**

28 An application for assistance under the program shall be submitted in
29 such form and in accordance with such procedures as the Administrator
30 shall establish.

31 **§ 401107. Recordkeeping**

32 The requirements of section 115 of the Community Development Banking
33 and Financial Institutions Act of 1994 (12 U.S.C. 4714) shall apply to a
34 qualified organization receiving assistance from the Administrator under the
35 program as if the qualified organization were a community development fi-
36 nancial institution receiving assistance from the Fund under that Act.

37 **§ 401108. Implementation**

38 The Administrator shall by regulation establish such requirements as are
39 necessary to carry out this chapter.

1 **§ 401109. Authorization of appropriations**

2 There are authorized to be appropriated to the Administrator to carry out
3 this chapter—

- 4 (1) \$15,000,000 for fiscal year 2000;
5 (2) \$15,000,000 for fiscal year 2001;
6 (3) \$15,000,000 for fiscal year 2002; and
7 (4) \$15,000,000 for fiscal year 2003.

8 **Chapter 403—Women’s Business Enterprise**
9 **Development**

Sec.

403101. Definitions.
403102. Establishment of the Interagency Committee.
403103. Duties of the Interagency Committee.
403104. Membership of the Interagency Committee.
403105. Reports from the Interagency Committee.
403106. Establishment of the National Women’s Business Council.
403107. Duties of the Council.
403108. Membership and staff of the Council.
403109. Studies and other research.
403110. Authorization of appropriations.

10 **§ 403101. Definitions**

11 In this chapter:

- 12 (1) CONTROL.—The term “control” means to exercise the power to
13 make policy decisions concerning a business.
14 (2) COUNCIL.—The term “Council” means the National Women’s
15 Business Council established under section 403106 of this title.
16 (3) INTERAGENCY COMMITTEE.—The term “Interagency Committee”
17 means the Interagency Committee on Women’s Business Enterprise es-
18 tablished under section 403102 of this title.
19 (4) OPERATE.—The term “operate” means to be actively involved in
20 the day-to-day management of a business.
21 (5) WOMEN’S BUSINESS ENTERPRISE.—The term “women’s business
22 enterprise” means—
23 (A) a business or businesses owned by a woman or a group of
24 women; or
25 (B) the establishment, maintenance, or development of a busi-
26 ness or businesses by a woman or a group of women.
27 (6) WOMEN-OWNED BUSINESS.—The term “women-owned business”
28 means a small business—
29 (A) that a woman or a group of women controls and operates;
30 and
31 (B) of which not less than 51 percent is owned by a woman or
32 a group of women.

1 **§ 403102. Establishment of the Interagency Committee**

2 There is established an interagency committee to be known as the Inter-
3 agency Committee on Women's Business Enterprise.

4 **§ 403103. Duties of the Interagency Committee**

5 (a) IN GENERAL.—The Interagency Committee shall—

6 (1) monitor, coordinate, and promote the plans, programs, and oper-
7 ations of the Federal agencies that may contribute to the establishment
8 and growth of women's business enterprises;

9 (2) develop and promote new public sector initiatives, policies, pro-
10 grams, and plans designed to foster women's business enterprises;

11 (3) review, monitor, and coordinate plans and programs, developed
12 in the public sector, that affect the ability of women-owned businesses
13 to obtain capital and credit; and

14 (4) promote and assist, as appropriate, in the development of surveys
15 of women-owned businesses.

16 (b) MEETINGS.—

17 (1) IN GENERAL.—The Interagency Committee shall meet not less
18 than biannually at such times as the Interagency Committee deter-
19 mines to be necessary to perform the duties under subsection (a).

20 (2) QUORUM.—A majority of the members of the Interagency Com-
21 mittee shall constitute a quorum for the approval of recommendations
22 or reports issued under this section.

23 (c) INTERACTION WITH COUNCIL.—

24 (1) CONSULTATION.—In performing its duties under subsection (a),
25 the Interagency Committee shall consult with the Council.

26 (2) JOINT MEETINGS.—The Interagency Committee—

27 (A) shall meet jointly with the Council not less frequently than
28 biannually; and

29 (B) may meet jointly with the Council more frequently at the
30 discretion of the chairperson of the Interagency Committee and
31 the chairperson of the Council.

32 (3) CHAIRPERSON.—The chairperson of the Interagency Committee
33 shall serve as chairperson of any joint meeting of the Interagency Com-
34 mittee and the Council.

35 **§ 403104. Membership of the Interagency Committee**

36 (a) IN GENERAL.—

37 (1) PARTICIPANTS.—The Interagency Committee shall be composed
38 of 1 representative from each of the following:

39 (A) The Department of Commerce.

40 (B) The Department of Defense.

41 (C) The Department of Health and Human Services.

- 1 (D) The Department of Labor.
2 (E) SBA.
3 (F) The Department of Transportation.
4 (G) The Department of the Treasury.
5 (H) The General Services Administration.
6 (I) The Board of Governors of the Federal Reserve.
7 (J) The Executive staff of the President engaged in policy-
8 making activities.

9 (2) APPOINTMENTS.—

10 (A) IN GENERAL.—Except as provided in subparagraph (B), the
11 head of each entity listed in paragraph (1) shall designate a rep-
12 resentative who—

- 13 (i) shall be a policymaking official within the entity; and
14 (ii) shall report directly to the head of the entity on the
15 status of the activities of the Interagency Committee.

16 (B) SBA.—With respect to SBA, the representative shall be the
17 Assistant Administrator of the Office of Women’s Business Own-
18 ership, who shall—

- 19 (i) serve as the vice chairperson of the Interagency Com-
20 mittee;
21 (ii) report directly to the Administrator on the status of the
22 activities on the Interagency Committee; and
23 (iii) serve as the Interagency Committee Liaison to the
24 Council.

25 (3) OTHER PARTICIPATION.—Representatives of the Federal Govern-
26 ment not listed in paragraph (1) may participate in the meetings and
27 functions of the Interagency Committee on a temporary basis as needed
28 to carry out specific Interagency Committee goals.

29 (b) APPOINTMENT OF CHAIRPERSON.—The President, in consultation
30 with the Administrator, shall appoint 1 of the members of the Interagency
31 Committee to serve as chairperson.

32 (c) NONCOMPENSATION.—A member of the Interagency Committee shall
33 serve without additional pay for such membership.

34 (d) DETAIL OF FEDERAL EMPLOYEES.—On request by the chairperson
35 of the Interagency Committee, the head of any Federal agency may detail
36 any of the personnel of the Federal agency to assist the Interagency Com-
37 mittee in carrying out its duties under this chapter without regard to sec-
38 tion 3341 of title 5.

39 **§ 403105. Reports from the Interagency Committee**

40 The Interagency Committee, through the Administrator, shall annually
41 submit to the President, the Committee on Small Business and Entrepre-

1 neurship of the Senate, and the Committee on Small Business of the House
2 of Representatives a report that contains—

3 (1) a detailed description of the activities of the Interagency Com-
4 mittee, including a verbatim report on the status of progress of the
5 Interagency Committee in meeting its responsibilities and duties under
6 section 403103(a) of this title;

7 (2) the findings and conclusions of the Interagency Committee; and

8 (3) the Interagency Committee's recommendations for such legisla-
9 tion and administrative actions as the Interagency Committee considers
10 appropriate to promote the development of small business concerns
11 owned and controlled by women.

12 **§ 403106. Establishment of the National Women's Business**
13 **Council**

14 There is established a council to be known as the National Women's
15 Business Council, which shall serve as an independent source of advice and
16 policy recommendations to—

17 (1) the Interagency Committee;

18 (2) the Administrator (through the Assistant Administrator of the
19 Office of Women's Business Ownership);

20 (3) Congress; and

21 (4) the President.

22 **§ 403107. Duties of the Council**

23 (a) IN GENERAL.—The Council shall advise and consult with the Inter-
24 agency Committee on matters relating to the activities, functions, and poli-
25 cies of the Interagency Committee, as provided in this chapter.

26 (b) MEETINGS.—

27 (1) IN GENERAL.—The Council—

28 (A) shall meet jointly with the Interagency Committee as pro-
29 vided in section 403103(c) of this title; and

30 (B) shall meet separately at such times as the Council considers
31 necessary.

32 (2) QUORUM.—A majority of the members of the Council shall con-
33 stitute a quorum for the approval of recommendations or reports issued
34 under this section.

35 (c) RECOMMENDATIONS AND REPORTS.—The Council shall—

36 (1) make annual recommendations for consideration by the Inter-
37 agency Committee; and

38 (2) provide reports and make such other recommendations as the
39 Council considers appropriate to—

40 (A) the Interagency Committee;

41 (B) the President;

1 (C) the Administrator (through the Assistant Administrator of
2 the Office of Women's Business Ownership); and

3 (D) the Committee on Small Business and Entrepreneurship of
4 the Senate and the Committee on Small Business of the House
5 of Representatives.

6 (d) OTHER DUTIES.—The Council shall—

7 (1) review, coordinate, and monitor plans and programs developed in
8 the public and private sectors that affect the ability of women-owned
9 business enterprises to obtain capital and credit;

10 (2) promote and assist in the development of a women's business
11 census and other surveys of women-owned businesses;

12 (3) monitor and promote the plans, programs, and operations of
13 Federal agencies that may contribute to the establishment and growth
14 of women's business enterprise;

15 (4) develop and promote new initiatives, policies, programs, and
16 plans designed to foster women's business enterprises;

17 (5) advise and consult with the Interagency Committee in the design
18 of a comprehensive plan for a joint public-private sector effort to facili-
19 tate growth and development of women's business enterprises; and

20 (6) not later than 90 days after the last day of each fiscal year, sub-
21 mit to the President, the Committee on Small Business and Entrepre-
22 neurship of the Senate, and the Committee on Small Business of the
23 House of Representatives, a report that contains—

24 (A) a detailed description of the activities of the Council, includ-
25 ing a status report on the Council's progress toward meeting its
26 duties under this subsection and subsection (a);

27 (B) the findings, conclusions, and recommendations of the
28 Council; and

29 (C) the Council's recommendations for such legislation and ad-
30 ministrative actions as the Council considers appropriate to pro-
31 mote the development of small business concerns owned and con-
32 trolled by women.

33 (e) FORM OF INFORMATION.—The information described in subpara-
34 graphs (A) to (C) of subsection (d)(6) shall be reported in a report under
35 subsection (d) verbatim, with any separate additional, concurring, or dis-
36 senting views of the Administrator.

37 **§ 403108. Membership and staff of the Council**

38 (a) CHAIRPERSON.—

39 (1) IN GENERAL.—The President shall appoint an individual to
40 serve as chairperson of the Council, in consultation with the Adminis-
41 trator.

1 (2) QUALIFICATIONS.—The chairperson of the Council shall be a
2 prominent business woman who is qualified to head the Council by vir-
3 tue of her education, training, and experience.

4 (b) OTHER MEMBERS.—The Administrator shall, after receiving the rec-
5 ommendations of the Chairman and the Ranking Member of the Committee
6 on Small Business and Entrepreneurship of the Senate and the Committee
7 on Small Business of the House of Representatives, appoint, in consultation
8 with the chairperson of the Council, 14 members of the Council, of whom—

9 (1) 4 shall be—

10 (A) owners of small business concerns; and

11 (B) members of the same political party as the President;

12 (2) 4 shall—

13 (A) be owners of small business concerns; and

14 (B) not be members of the same political party as the Presi-
15 dent; and

16 (3) 6 shall be representatives of women’s business organizations, in-
17 cluding representatives of women’s business center sites.

18 (c) DIVERSITY.—In appointing members of the Council, the Adminis-
19 trator shall, to the extent possible, ensure that the members appointed re-
20 flect geographic (including both urban and rural areas), racial, economic,
21 and public-private sectoral diversity.

22 (d) TERMS.—A member of the Council shall be appointed for a term of
23 3 years.

24 (e) OTHER FEDERAL SERVICE.—If, after appointment to the Council, a
25 member of the Council becomes an officer or employee of the Federal Gov-
26 ernment, the member may continue as a member of the Council for not
27 longer than the 30-day period beginning on the date on which the member
28 becomes such an officer or employee.

29 (f) VACANCIES.—

30 (1) IN GENERAL.—A vacancy on the Council shall be filled not later
31 than 30 days after the date on which the vacancy occurs, in the man-
32 ner in which the original appointment was made, and shall be subject
33 to any conditions that applied to the original appointment.

34 (2) UNEXPIRED TERM.—An individual chosen to fill a vacancy shall
35 be appointed for the unexpired term of the member replaced.

36 (g) REIMBURSEMENTS.—A member of the Council shall serve without pay
37 for such membership, except that a member shall be entitled to reimburse-
38 ment for travel, subsistence, and other necessary expenses incurred by the
39 member in carrying out the functions of the Council, in the same manner
40 as a person serving on an advisory committee under section 103115 of this
41 title.

1 (h) EXECUTIVE DIRECTOR AND ADDITIONAL EMPLOYEES.—

2 (1) EXECUTIVE DIRECTOR.—The Administrator, in consultation with
3 the chairperson of the Council, shall appoint an executive director of
4 the Council.

5 (2) ADDITIONAL EMPLOYEES.—On recommendation by the executive
6 director, the chairperson of the Council may appoint and fix the pay
7 of 4 additional employees of the Council, at a rate of pay not to exceed
8 the maximum rate of pay payable for a position at GS-15 of the Gen-
9 eral Schedule.

10 (3) APPROPRIATIONS.—An appointment under paragraph (1) or (2)
11 shall be subject to the appropriation of funds.

12 (i) RATES OF PAY.—The executive director and staff of the Council may
13 be appointed without regard to the provisions of title 5 governing appoint-
14 ments in the competitive service, and except as provided in subsection (e),
15 may be paid without regard to the provisions of chapter 51 and subchapter
16 III of chapter 53 of that title relating to classification and General Schedule
17 pay rates, except that the executive director may not receive pay in excess
18 of the annual rate of basic pay payable for a position at ES-3 of the Senior
19 Executive Pay Schedule under section 5382 of title 5.

20 **§ 403109. Studies and other research**

21 (a) IN GENERAL.—The Council may conduct such studies and other re-
22 search relating to the award of Federal prime contracts and subcontracts
23 to women-owned businesses, to access to credit and investment capital by
24 women entrepreneurs, or to other issues relating to women-owned busi-
25 nesses, as the Council determines to be appropriate.

26 (b) CONTRACT AUTHORITY.—In conducting any study or other research
27 under this section, the Council may contract with 1 or more public or pri-
28 vate entities.

29 **§ 403110. Authorization of appropriations**

30 (a) IN GENERAL.—There is authorized to be appropriated to carry out
31 this chapter \$1,000,000 for each of fiscal years 2001 through 2003, of
32 which \$550,000 shall be available in each such fiscal year to carry out sec-
33 tion 403109 of this title.

34 (b) BUDGET REVIEW.—No amount made available under this section for
35 any fiscal year may be obligated or expended by the Council before the date
36 on which the Council reviews and approves the operating budget of the
37 Council to carry out the responsibilities of the Council for that fiscal year.

38 **Chapters 405 Through 489—Reserved**

39 **Chapter 491—Miscellaneous**

Sec.

491101. Small business economic policy.

491102. Small Business Manufacturing Task Force.

- 491103. Test program for negotiation of comprehensive small business subcontracting plans.
- 491104. Coordination of Federal assistance for small business concerns adversely affected by NAFTA.
- 491105. Disaster aid to major sources of employment.
- 491106. Background check policy; fingerprinting.
- 491107. Expedited resolution of contract dispute matters.
- 491108. Small Business Procurement Advisory Council.
- 491109. Small business energy efficiency.
- 491110. Information regarding, and marketing of, programs for veterans and reservists.
- 491111. Outreach regarding health insurance options available to children.
- 491112. Secondary market lending authority.

1 **§ 491101. Small business economic policy**

2 (a) DECLARATION OF SMALL BUSINESS POLICY.—

3 (1) PRESERVATION AND PROMOTION OF COMPETITIVE FREE ENTER-
4 PRISE SYSTEM.—For the purpose of preserving and promoting a com-
5 petitive free enterprise economic system, Congress declares that it is
6 the continuing policy and responsibility of the Federal Government to
7 use all practical means and to take such actions as are necessary, con-
8 sistent with its needs and obligations and other essential considerations
9 of national policy, to implement and coordinate all Federal agency poli-
10 cies, programs, and activities to—

11 (A) foster the economic interests of small businesses;

12 (B) ensure the existence of a competitive economic climate con-
13 ducive to the development, growth, and expansion of small busi-
14 nesses;

15 (C) establish incentives to ensure that adequate capital and
16 other resources at competitive prices are available to small busi-
17 nesses;

18 (D) reduce the concentration of economic resources and expand
19 competition; and

20 (E) provide an opportunity for entrepreneurship, inventiveness,
21 and the creation and growth of small businesses.

22 (2) AVAILABILITY OF ADEQUATE CAPITAL TO SMALL BUSINESSES.—

23 Congress declares that the Federal Government is committed to a pol-
24 icy of utilizing all reasonable means, consistent with the overall eco-
25 nomic policy goals of the Nation and the preservation of the competi-
26 tive free enterprise system of the Nation, to establish private sector in-
27 centives that will help ensure that adequate capital at competitive
28 prices is available to small businesses.

29 (b) PROMOTION OF INVESTMENT.—To fulfill the policy stated in sub-
30 section (a), each Federal agency shall use all reasonable means to coordi-
31 nate, create, and sustain policies and programs that promote investment in
32 small businesses, including the investments that expand employment oppor-
33 tunities and foster the effective and efficient use of human and natural re-
34 sources in the national economy.

1 (e) REPORT ON SMALL BUSINESS AND COMPETITION.—

2 (1) IN GENERAL.—Not later than January 20 of each year, the
3 President shall submit to the Committee on Small Business and Entre-
4 preneurship of the Senate and the Committee on Small Business of the
5 House of Representatives a report on small business and competition.

6 (2) CONTENTS.—A report under paragraph (1) shall—

7 (A) examine the current role of small business in the economy
8 on an industry-by-industry basis;

9 (B) present current and historical data on production, employ-
10 ment, investment, population, job creation and retention, annual
11 business failures, annual business startups, and other economic
12 variables for small business in the economy as a whole and for
13 small business in each sector of the economy, with, to the extent
14 practicable, specific statistics divided as to urban, suburban, and
15 rural areas;

16 (C) identify economic trends that may affect the small business
17 sector and the state of competition;

18 (D)(i) examine the effects on small business and competition of
19 policies, programs, and activities, including—

20 (I) the Internal Revenue Code of 1986 (26 U.S.C. 1 et
21 seq.);

22 (II) the Employee Retirement Income Security Act of 1974
23 (29 U.S.C. 1001 et seq.);

24 (III) the Securities Act of 1933 (15 U.S.C. 77a et seq.);

25 and

26 (IV) the Securities Exchange Act of 1934 (15 U.S.C. 78a
27 et seq.);

28 (ii) identify problems generated by such policies, programs, and
29 activities; and

30 (iii) recommend legislative and administrative solutions to such
31 problems;

32 (E) recommend a program for carrying out the policy declared
33 in subsection (a), including such recommendations for legislation
34 as the President considers necessary or desirable; and

35 (F) include an appendix that discloses, for each Federal agen-
36 cy—

37 (i) the total dollar value of all Federal contracts (including
38 subcontracts) exceeding \$10,000 in amount; and

39 (ii) the dollar amount of those contracts awarded to—

40 (I) small businesses;

41 (II) minority-owned businesses;

1 (III) female-owned businesses; and

2 (IV) veteran-owned businesses.

3 (3) **DETAILING OF INFORMATION.**—The information required to be
4 contained in the report under paragraph (1) shall separately detail the
5 portions of the information that are relevant to—

6 (A) small business concerns owned and controlled by socially
7 and economically disadvantaged individuals, by gender;

8 (B) small business concerns owned and controlled by women;

9 (C) qualified HUBZone small business concerns; and

10 (D) small business concerns owned and controlled by veterans
11 and small business concerns owned and controlled by service-dis-
12 abled veterans.

13 (4) **SUPPLEMENTARY REPORTS.**—The President may from time to
14 time submit to the Committee on Small Business and Entrepreneurship
15 of the Senate and the Committee on Small Business of the House of
16 Representatives reports supplementary to a report under paragraph (1)
17 that includes such supplementary or revised recommendations as the
18 President considers necessary or desirable to achieve the policy declared
19 in subsection (a).

20 **§ 491102. Small Business Manufacturing Task Force**

21 (a) **ESTABLISHMENT.**—The Administrator shall establish a Small Busi-
22 ness Manufacturing Task Force (referred to in this section as the “Task
23 Force”) to address the concerns of small manufacturers.

24 (b) **CHAIR.**—The Administrator shall assign a member of the Task Force
25 to serve as chair of the Task Force.

26 (c) **DUTIES.**—The Task Force shall—

27 (1) evaluate and identify whether programs and services are suffi-
28 cient to serve the needs of small manufacturers;

29 (2) actively promote the SBA programs and services that serve small
30 manufacturers; and

31 (3) identify and study the unique conditions facing small manufac-
32 turers and develop and propose policy initiatives to support and assist
33 small manufacturers.

34 (d) **MEETINGS.**—

35 (1) **FREQUENCY.**—The Task Force shall meet not less than 4 times
36 a year, and more frequently if necessary to perform its duties.

37 (2) **QUORUM.**—A majority of the members of the Task Force shall
38 constitute a quorum to approve recommendations or reports.

39 (e) **PERSONNEL MATTERS.**—

1 (1) COMPENSATION OF MEMBERS.—A member of the Task Force
2 shall serve without compensation in addition to that received for serv-
3 ices rendered as an officer or employee of the United States.

4 (2) DETAIL OF SBA EMPLOYEES.—Any SBA employee may be de-
5 tailed to the Task Force without reimbursement and without interrup-
6 tion or loss of civil service status or privilege.

7 (f) REPORT.—The Task Force shall annually submit a report containing
8 the findings and recommendations of the Task Force to—

9 (1) the President;

10 (2) the Committee on Small Business and Entrepreneurship of the
11 Senate; and

12 (3) the Committee on Small Business of the House of Representa-
13 tives.

14 **§ 491103. Test program for negotiation of comprehensive**
15 **small business subcontracting plans**

16 (a) TEST PROGRAM.—

17 (1) IN GENERAL.—The Secretary of Defense shall establish a test
18 program under which contracting activities in the military departments
19 and the defense agencies are authorized to undertake 1 or more dem-
20 onstration projects to determine whether the negotiation and adminis-
21 tration of comprehensive subcontracting plans will reduce administra-
22 tive burdens on contractors while enhancing opportunities provided
23 under Department of Defense contracts for small business concerns
24 and small business concerns owned and controlled by socially and eco-
25 nomically disadvantaged individuals.

26 (2) BROAD RANGE OF SUPPLIES AND SERVICES.—In selecting the
27 contracting activities to undertake demonstration projects, the Sec-
28 retary of Defense shall take such action as is necessary to ensure that
29 a broad range of the supplies and services acquired by the Department
30 of Defense are included in the test program.

31 (3) CONSULTATION; PUBLIC COMMENT.—In developing the test pro-
32 gram, the Secretary of Defense shall—

33 (A) consult with the Administrator; and

34 (B) provide an opportunity for public comment on the test pro-
35 gram.

36 (b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—

37 (1) IN GENERAL.—In a demonstration project under the test pro-
38 gram, the Secretary of a military department or head of a defense
39 agency shall negotiate, monitor, and enforce compliance with a compre-
40 hensive subcontracting plan with a Department of Defense contractor
41 described in paragraph (3).

1 (2) SCOPE.—The comprehensive subcontracting plan of a contrac-
2 tor—

3 (A) shall apply to the entire business organization of the con-
4 tractor or to 1 or more of the contractor's divisions or operating
5 elements, as specified in the subcontracting plan; and

6 (B) shall cover each Department of Defense contract that is en-
7 tered into by the contractor and each subcontract that is entered
8 into by the contractor as the subcontractor under a Department
9 of Defense contract.

10 (3) DEPARTMENT OF DEFENSE CONTRACTOR.—A Department of
11 Defense contractor referred to in paragraph (1) is, with respect to a
12 comprehensive subcontracting plan negotiated in any fiscal year, a
13 business concern that, during the immediately preceding fiscal year,
14 furnished the Department of Defense with goods or services (including
15 professional services, research and development services, and construc-
16 tion services) under at least 3 Department of Defense contracts having
17 an aggregate value of at least \$5,000,000.

18 (c) WAIVER OF CERTAIN SUBCONTRACTING PLAN REQUIREMENTS.—A
19 Department of Defense contractor is not required to negotiate or submit a
20 subcontracting plan under section 243103(b) or 243103(e) of this title with
21 respect to a Department of Defense contract if—

22 (1) the contractor has negotiated a comprehensive subcontracting
23 plan under the test program that includes the matters specified in sec-
24 tion 243103(d) of this title;

25 (2) such matters have been determined to be acceptable by the Sec-
26 retary of the military department or head of a Defense Agency nego-
27 tiating the comprehensive subcontracting plan; and

28 (3) the comprehensive subcontracting plan applies to the contract.

29 (d) FAILURE TO MAKE GOOD FAITH EFFORT TO COMPLY WITH COM-
30 PANY-WIDE SUBCONTRACTING PLAN.—

31 (1) IN GENERAL.—A contractor that has negotiated a comprehensive
32 subcontracting plan under the test program shall be subject to section
33 243105 of this title regarding the assessment of liquidated damages for
34 failure to make a good faith effort to comply with its company-wide
35 plan and the goals specified in the plan.

36 (2) SUSPENSION OF EFFECTIVENESS.—This subsection shall not be
37 in effect during the period of the test program under subsection (e).

38 (e) TERMINATION.—The test program shall terminate on December 31,
39 2014.

1 **§ 491104. Coordination of Federal assistance for small busi-**
2 **ness concerns adversely affected by NAFTA**

3 The Administrator shall coordinate Federal assistance to provide counsel-
4 ing to small business concerns adversely affected by the North American
5 Free Trade Agreement.

6 **§ 491105. Disaster aid to major sources of employment**

7 (a) IN GENERAL.—The Administrator may provide any nonagricultural
8 enterprise that has constituted a major source of employment in an area
9 suffering a major disaster and that is no longer in substantial operation as
10 a result of the disaster a loan in such amount as is necessary to enable the
11 enterprise to resume operations in order to assist in restoring the economic
12 viability of the disaster area.

13 (b) LOAN AMOUNT.—A loan under this section shall be made without re-
14 gard to any limitation on the amount of a loan that may otherwise be im-
15 posed by any other provision of law (including a regulation).

16 (c) ADDITIONAL ASSISTANCE.—Assistance under this section shall be in
17 addition to any other Federal disaster assistance, except that such other as-
18 sistance may be adjusted or modified to the extent that the Under Secretary
19 of Emergency Preparedness and Response considers appropriate.

20 (d) INTEREST.—A loan made under this section shall bear interest at a
21 rate determined by the Secretary of the Treasury, taking into consideration
22 the current average market yield on outstanding marketable obligations of
23 the United States with remaining periods to maturity of 10 to 12 years,
24 reduced by not to exceed 2 percent per year. In no event shall a loan made
25 under this section bear interest at a rate in excess of 6 percent per year.

26 (e) DEFERRAL OF PAYMENT OF PRINCIPAL AND INTEREST.—The Presi-
27 dent, if the President considers it necessary, may defer payments of prin-
28 cipal and interest on a loan under this section for a period not to exceed
29 3 years after the date of the loan. Any such deferred payments shall bear
30 interest at the rate determined under subsection (d).

31 **§ 491106. Background check policy; fingerprinting**

32 The Administrator shall not require fingerprints to be obtained for back-
33 ground check purposes from any participant in any SBA program who is
34 serving on a voluntary basis and without compensation unless the Adminis-
35 trator has reasonable grounds to believe that the participant's record or
36 background is such as to make the participant ineligible to participate in
37 the program.

38 **§ 491107. Expedited resolution of contract dispute matters**

39 (a) REQUIRED FAR PROVISION.—The Federal Acquisition Regulation
40 shall include provisions that require a contracting officer—

1 (1) to make every reasonable effort to respond in writing within 30
2 days to any written request made to a contracting officer with respect
3 to a matter relating to the administration of a contract that is received
4 from a small business concern; and

5 (2) if the contracting officer is unable to reply within the 30-day pe-
6 riod, to transmit to the contractor within that period a written notifica-
7 tion of a specific date by which the contracting officer expects to re-
8 spond.

9 (b) APPLICABILITY.—The provision required under subsection (a) shall
10 not apply to a request for a contracting officer’s decision under chapter 71
11 of title 41.

12 (c) EFFECT OF SECTION.—This section does not create any right under
13 chapter 71 of title 41.

14 **§ 491108. Small Business Procurement Advisory Council**

15 (a) ESTABLISHMENT.—There is established an interagency council to be
16 known as the Small Business Procurement Advisory Council (referred to in
17 this section as the “Council”).

18 (b) DUTIES.—The duties of the Council are—

19 (1) to develop positions on proposed procurement regulations affect-
20 ing the small business community;

21 (2) to submit comments reflecting such positions to appropriate reg-
22 ulatory authorities;

23 (3) to conduct reviews of the Office of Small and Disadvantaged
24 Business Utilization of each Federal agency to determine the compli-
25 ance of each Office with requirements under section 251109 of this
26 title; and

27 (4) to identify best practices for maximizing small business utiliza-
28 tion in Federal contracting that may be implemented by Federal agen-
29 cies having procurement powers.

30 (c) MEMBERSHIP.—The Council shall be composed of the following mem-
31 bers:

32 (1) The Administrator (or a designee of the Administrator).

33 (2) The Director of the Minority Business Development Agency.

34 (3) The Director of Small and Disadvantaged Business Utilization
35 of each procuring agency.

36 (d) CHAIRMAN.—The Council shall be chaired by the Administrator (or
37 a designee of the Administrator).

38 (e) MEETINGS.—The Council shall meet at the call of the chairman as
39 necessary to consider proposed procurement regulations affecting the small
40 business community.

1 (f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition
2 Regulatory Council and other appropriate regulatory authorities shall con-
3 sider comments submitted in a timely manner under subsection (b)(2).

4 (g) ANNUAL REPORT.—The Council shall submit to the Committee on
5 Small Business of the House of Representatives and the Committee on
6 Small Business and Entrepreneurship of the Senate an annual report that
7 describes—

8 (1) the comments submitted under subsection (b)(2) during the 1-
9 year period ending on the date on which the report is submitted, in-
10 cluding any outcomes related to the comments;

11 (2) the results of reviews conducted under subsection (b)(3) during
12 the 1-year period; and

13 (3) best practices identified under subsection (b)(4) during the 1-
14 year period.

15 **§ 491109. Small business energy efficiency**

16 (a) DEFINITIONS.—In this section:

17 (1) DISABILITY.—The term “disability” has the meaning given the
18 term in section 3 of the Americans with Disabilities Act of 1990 (42
19 U.S.C. 12102).

20 (2) EFFICIENCY PROGRAM.—the term “efficiency program” means
21 the small business energy efficiency program established under sub-
22 section (c).

23 (3) ELECTRIC UTILITY.—The term “electric utility” has the meaning
24 given the term in section 3 of the Public Utility Regulatory Policies
25 Act of 1978 (16 U.S.C. 2602).

26 (4) GOVERNMENTWIDE PROGRAM.—The term “Governmentwide pro-
27 gram” means the program established under subsection (b).

28 (5) HIGH-PERFORMANCE GREEN BUILDING.—The term “high-per-
29 formance green building” has the meaning given the term in section
30 401 of the Energy Independence and Security Act of 2007 (42 U.S.C.
31 17061).

32 (6) ON-BILL FINANCING.—The term “on-bill financing” means a low
33 interest or no interest financing agreement between a small business
34 concern and an electric utility for the purchase or installation of equip-
35 ment under which—

36 (A) the regularly scheduled payment of the small business con-
37 cern to the electric utility is not reduced by the amount of the re-
38 duction in cost attributable to the new equipment; and

39 (B) that amount is credited to the electric utility until the cost
40 of the purchase or installation is repaid.

1 (7) TELECOMMUTING.—The term “telecommuting” means the use of
2 telecommunications to perform work functions under circumstances
3 that reduce or eliminate the need to commute.

4 (8) TELECOMMUTING PILOT PROGRAM.—The term “telecommuting
5 pilot program” means the pilot program established under subsection
6 (d).

7 (b) GOVERNMENTWIDE PROGRAM.—

8 (1) IN GENERAL.—The Administrator shall promulgate final rules
9 establishing the Governmentwide program authorized under subsection
10 (d) of section 337 of the Energy Policy and Conservation Act (42
11 U.S.C. 6307) that ensure compliance with that subsection.

12 (2) ASSISTANCE.—The Administrator shall develop and coordinate a
13 Governmentwide program, building on the Energy Star for Small Busi-
14 ness program, to assist small business concerns in—

15 (A) becoming more energy efficient;

16 (B) understanding the cost savings from improved energy effi-
17 ciency; and

18 (C) identifying financing options for energy efficiency upgrades.

19 (3) CONSULTATION AND COOPERATION.—The Governmentwide pro-
20 gram shall be developed and coordinated—

21 (A) in consultation with the Secretary of Energy and the Ad-
22 ministrator of the Environmental Protection Agency; and

23 (B) in cooperation with any entities that the Administrator con-
24 siders appropriate, such as industry trade associations, industry
25 members, and energy efficiency organizations.

26 (4) AVAILABILITY OF INFORMATION.—The Administrator shall make
27 available the information and materials developed under the Govern-
28 mentwide program to—

29 (A) small business concerns, including smaller design, engineer-
30 ing, and construction firms; and

31 (B) other Federal programs for energy efficiency, such as the
32 Energy Star for Small Business program.

33 (5) STRATEGY.—The Administrator shall develop a strategy to edu-
34 cate, encourage, and assist small business concerns in adopting energy
35 efficient building fixtures and equipment.

36 (c) EFFICIENCY PROGRAM.—

37 (1) AUTHORITY.—The Administrator shall establish a small business
38 energy efficiency program to provide energy efficiency assistance to
39 small business concerns through small business development centers.

40 (2) SMALL BUSINESS DEVELOPMENT CENTERS.—

1 (A) IN GENERAL.—In carrying out the efficiency program, the
2 Administrator shall enter into agreements with small business de-
3 velopment centers under which small business development centers
4 shall—

5 (i) provide access to information and resources on energy
6 efficiency practices, including on-bill financing options;

7 (ii) conduct training and educational activities;

8 (iii) offer confidential, free, one-on-one, in-depth energy au-
9 dits to owners and operators of small business concerns re-
10 garding energy efficiency practices;

11 (iv) give referrals to certified professionals and other pro-
12 viders of energy efficiency assistance that meet such stand-
13 ards for educational, technical, and professional competency
14 as the Administrator shall establish;

15 (v) to the extent not inconsistent with controlling State
16 public utility regulations, act as a facilitator between small
17 business concerns, electric utilities, lenders, and the Adminis-
18 trator to facilitate on-bill financing arrangements;

19 (vi) provide necessary support to small business concerns
20 to—

21 (I) evaluate energy efficiency opportunities and oppor-
22 tunities to design or construct high-performance green
23 buildings;

24 (II) evaluate renewable energy sources, such as the
25 use of solar and small wind energy to supplement power
26 consumption;

27 (III) secure financing to achieve energy efficiency or
28 to design or construct high-performance green buildings;
29 and

30 (IV) implement energy efficiency projects;

31 (vii) assist owners and operators of small business concerns
32 with the development and commercialization of clean tech-
33 nology products, goods, services, and processes that use re-
34 newable energy sources, dramatically reduce the use of natu-
35 ral resources, and cut or eliminate greenhouse gas emissions
36 through—

37 (I) technology assessment;

38 (II) intellectual property;

39 (III) small business innovation research submissions
40 under division I of subtitle II;

41 (IV) strategic alliances;

1 (V) business model development; and
2 (VI) preparation for investors; and
3 (viii) help small business concerns improve environmental
4 performance by shifting to less hazardous materials and re-
5 ducing waste and emissions, including by providing assistance
6 for small business concerns to adapt the materials they use,
7 the processes they operate, and the products and services they
8 produce.

9 (B) REPORTS.—A small business development center participat-
10 ing in the efficiency program shall submit to the Administrator
11 and the Administrator of the Environmental Protection Agency an
12 annual report that includes—

13 (i) a summary of the energy efficiency assistance provided
14 by the small business development center under the efficiency
15 program;

16 (ii) the number of small business concerns assisted by the
17 small business development center under the efficiency pro-
18 gram;

19 (iii) statistics on the total amount of energy saved as a re-
20 sult of assistance provided by that center under the efficiency
21 program; and

22 (iv) any additional information that the Administrator, in
23 consultation with the Association, determines to be necessary.

24 (C) REPORTS TO CONGRESS.—Not later than 60 days after the
25 date on which all reports under subparagraph (B) relating to a
26 year are submitted, the Administrator shall submit to the Commit-
27 tee on Small Business and Entrepreneurship of the Senate and
28 the Committee on Small Business of the House of Representatives
29 a report summarizing the information regarding the efficiency pro-
30 gram submitted by small business development centers participat-
31 ing in the efficiency program.

32 (3) ELIGIBILITY.—A small business development center shall be eli-
33 gible to participate in the efficiency program only if the small business
34 development center is accredited under section 271111(b) of this title.

35 (4) SELECTION OF PARTICIPATING STATE PROGRAMS.—From among
36 small business development centers submitting applications to partici-
37 pate in the efficiency program, the Administrator—

38 (A) shall, to the maximum extent practicable, select small busi-
39 ness development centers in such a manner as to promote a na-
40 tionwide distribution of small business development centers partici-
41 pating in the efficiency program; and

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1 (B) may not select more than 1 small business development cen-
2 ter in a State to participate in the efficiency program.

3 (5) MATCHING REQUIREMENT.—Section 271102(g)(1) of this title
4 shall apply to assistance made available under the efficiency program.

5 (6) GRANT AMOUNTS.—A small business development center selected
6 to participate in the efficiency program under paragraph (4) shall be
7 eligible to receive a grant in an amount equal to not less than
8 \$100,000 nor more than \$300,000 in each fiscal year.

9 (7) EVALUATION AND REPORT.—The Comptroller General shall—

10 (A) not later than 30 months after the date of disbursement of
11 the 1st grant under the efficiency program, initiate an evaluation
12 of the efficiency program; and

13 (B) not later than 6 months after the date of the initiation of
14 the evaluation under subparagraph (A), submit to the Adminis-
15 trator, the Committee on Small Business and Entrepreneurship of
16 the Senate, and the Committee on Small Business of the House
17 of Representatives a report containing—

18 (i) the results of the evaluation; and

19 (ii) any recommendations regarding whether the efficiency
20 program, with or without modification, should be extended to
21 include the participation of all small business development
22 centers.

23 (8) GUARANTEE.—To the extent not inconsistent with State law, the
24 Administrator may guarantee the timely payment of a loan made to a
25 small business concern through an on-bill financing agreement on such
26 terms and conditions as the Administrator shall establish through a
27 formal rulemaking, after providing notice and an opportunity for com-
28 ment.

29 (9) IMPLEMENTATION.—Subject to amounts approved in advance in
30 appropriations Acts and separate from amounts approved to carry out
31 section 271102(a) of this title, the Administrator may make grants or
32 enter into cooperative agreements to carry out this subsection.

33 (10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to
34 be appropriated such sums as are necessary to make grants and enter
35 into cooperative agreements to carry out this subsection.

36 (11) TERMINATION.—The authority under this subsection shall ter-
37 minate 4 years after the date of disbursement of the 1st grant under
38 the efficiency program.

39 (d) TELECOMMUTING PILOT PROGRAM.—

40 (1) IN GENERAL.—The Administrator shall conduct, in not more
41 than 5 SBA regions, a pilot program to provide information regarding

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1 telecommuting to small business concerns and to encourage small busi-
2 ness concerns to offer telecommuting options to their employees.

3 (2) SPECIAL OUTREACH TO INDIVIDUALS WITH DISABILITIES.—In
4 carrying out the telecommuting pilot program, the Administrator shall
5 make a concerted effort to provide information to—

6 (A) small business concerns owned by or employing individuals
7 with disabilities, particularly veterans who are individuals with dis-
8 abilities;

9 (B) Federal, State, and local agencies having knowledge and ex-
10 pertise in assisting individuals with disabilities, including veterans
11 who are individuals with disabilities; and

12 (C) any group or organization the primary purpose of which is
13 to aid individuals with disabilities or veterans who are individuals
14 with disabilities.

15 (3) PERMISSIBLE ACTIVITIES.—In carrying out the telecommuting
16 pilot program, the Administrator may—

17 (A) produce educational materials and conduct presentations de-
18 signed to raise awareness in the small business community of the
19 benefits and the ease of telecommuting;

20 (B)(i) conduct outreach to small business concerns that are con-
21 sidering offering telecommuting options; and

22 (ii) conduct outreach as provided in paragraph (2); and

23 (C) acquire telecommuting technologies and equipment to be
24 used for demonstration purposes.

25 (4) SELECTION OF REGIONS.—In determining which regions will par-
26 ticipate in the telecommuting pilot program, the Administrator shall
27 give priority consideration to regions in which Federal agencies and
28 private-sector employers have demonstrated a strong regional commit-
29 ment to telecommuting.

30 (5) REPORT.—Not later than 2 years after the date on which funds
31 are first appropriated to carry out this subsection, the Administrator
32 shall submit to the Committee on Small Business and Entrepreneur-
33 ship of the Senate and the Committee on Small Business of the House
34 of Representatives a report containing the results of an evaluation of
35 the telecommuting pilot program and any recommendations regarding
36 whether the pilot program, with or without modification, should be ex-
37 tended to include the participation of all SBA regions.

38 (6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to
39 be appropriated to SBA \$5,000,000 to carry out this subsection.

1 (2) MEMBERSHIP.—The task force shall consist of the Adminis-
2 trator, the Secretary of Health and Human Services, the Secretary of
3 Labor, and the Secretary of the Treasury.

4 (3) RESPONSIBILITIES.—The campaign conducted under this sub-
5 section shall include—

6 (A) efforts to educate the owners of small business concerns
7 about the value of health coverage for children;

8 (B) information regarding options available to the owners and
9 employees of small business concerns to make insurance more af-
10 fordable, including Federal and State tax deductions and credits
11 for health care-related expenses and health insurance expenses and
12 Federal tax exclusion for health insurance options available under
13 employer-sponsored cafeteria plans under section 125 of the Inter-
14 nal Revenue Code of 1986 (26 U.S.C. 125);

15 (C) efforts to educate the owners of small business concerns
16 about assistance available through public programs; and

17 (D) efforts to educate the owners and employees of small busi-
18 ness concerns regarding the availability of the hotline operated as
19 part of the Insure Kids Now program of the Department of
20 Health and Human Services.

21 (4) IMPLEMENTATION.—In carrying out this subsection, the task
22 force may—

23 (A) use any business partner of SBA, including—

24 (i) a small business development center;

25 (ii) a certified development company;

26 (iii) a women's business center; and

27 (iv) SCORE;

28 (B) enter into—

29 (i) a memorandum of understanding with a chamber of
30 commerce; and

31 (ii) a partnership with any appropriate small business con-
32 cern or health advocacy group; and

33 (C) designate outreach programs at regional offices of the De-
34 partment of Health and Human Services to work with SBA dis-
35 trict offices.

36 (5) WEBSITE.—The Administrator shall ensure that links to infor-
37 mation on the eligibility and enrollment requirements for the Medicaid
38 program and State children's health insurance program of each State
39 are prominently displayed on the SBA website.

40 (6) REPORT.—

1 (A) IN GENERAL.—Every 2 years, the Administrator shall sub-
2 mit to the Committee on Small Business and Entrepreneurship of
3 the Senate and the Committee on Small Business of the House
4 of Representatives a report on the status of the nationwide cam-
5 paign conducted under paragraph (1).

6 (B) CONTENTS.—A report under subparagraph (A) shall in-
7 clude a status update on all efforts made to educate owners and
8 employees of small business concerns on options for providing
9 health insurance for children through public and private alter-
10 natives.

11 **§ 491112. Secondary market lending authority**

12 (a) DEFINITIONS.—In this section:

13 (1) AUTHORITY.—The term “Authority” mean the Secondary Mar-
14 ket Lending Authority established under subsection (b)(2).

15 (2) SBA SECONDARY MARKET.—The term “SBA secondary market”
16 means the market for the purchase and sale of loans originated, under-
17 written, and closed under subtitles I and II.

18 (3) SYSTEMICALLY IMPORTANT SBA SECONDARY MARKET BROKER-
19 DEALER.—The term “systemically important SBA secondary market
20 broker-dealer” means an entity designated as such under subsection
21 (b)(1).

22 (b) RESPONSIBILITIES, AUTHORITIES, ORGANIZATION, AND LIMITA-
23 TIONS.—

24 (1) DESIGNATION OF SYSTEMICALLY IMPORTANT SBA SECONDARY
25 MARKET BROKER-DEALERS.—The Administrator shall establish a pro-
26 cess by which the Administrator, in consultation with the Board of Gov-
27 ernors of the Federal Reserve and the Secretary of the Treasury, shall
28 designate as systemically important SBA secondary market broker-
29 dealers entities that are vital to the continued operation of the SBA
30 secondary market by reason of their purchase and sale of the govern-
31 ment guaranteed portion of loans, or pools of loans, originated, under-
32 written, and closed under subtitles I and II.

33 (2) ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AU-
34 THORITY.—

35 (A) ORGANIZATION.—

36 (i) IN GENERAL.—The Administrator shall establish within
37 the SBA an office, to be known as the Secondary Market
38 Lending Authority, to provide loans to systemically important
39 SBA secondary market broker-dealers to be used for the pur-
40 pose of financing the inventory of the government guaranteed

1 portion of loans, originated, underwritten, and closed under
2 subtitles I and II, or pools of such loans.

3 (ii) DIRECTOR.—The Administrator shall appoint a Direc-
4 tor of the Authority, who shall report to the Administrator.

5 (iii) PERSONNEL.—The Administrator may hire such per-
6 sonnel as are necessary to operate the Authority.

7 (iv) CONTRACTING OF OPERATIONS.—The Administrator
8 may contract such Authority operations as the Administrator
9 determines to be necessary to qualified 3d party persons.

10 (v) CONTRACTING WITH FIDUCIARY AND CUSTODIAL
11 AGENTS.—The Administrator may contract with private sec-
12 tor fiduciary and custodial agents as necessary to operate the
13 Authority.

14 (B) LOANS.—

15 (i) PROCESS.—The Administrator shall establish by regula-
16 tion a process under which systemically important SBA sec-
17 ondary market broker-dealers may apply to the Administrator
18 for loans under this section.

19 (ii) CONTENTS.—

20 (I) PROCESS.—The regulation under clause (i) shall
21 provide a process by which the Administrator shall con-
22 sider and make decisions regarding whether to extend a
23 loan applied for under this section.

24 (II) DOCUMENTATION.—The regulation under clause
25 (i) shall provide for such loan documents, legal cov-
26 enants, collateral requirements and other required docu-
27 mentation as necessary to protect the interests of the
28 Administrator and the United States.

29 (III) OTHER PROVISIONS.—The regulation under
30 clause (i) shall include provisions to ensure that—

31 (aa) loans made under this section are for the
32 sole purpose of financing the inventory of the Gov-
33 ernment guaranteed portion of loans, originated,
34 underwritten, and closed under subtitles I and II, or
35 pools of such loans.

36 (bb) loans made under this section are fully col-
37 lateralized to the satisfaction of the Administrator;

38 (cc) there is no limit to the frequency with which
39 a borrower may borrow under this section unless the
40 Administrator determines that doing so would cre-

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1 ate an undue risk of loss to the Administrator or
2 the United States; and

3 (dd) there is no limit on the size of a loan, sub-
4 ject to the discretion of the Administrator.

5 (iii) INTEREST.—Interest on loans under this section shall
6 not exceed the Federal Funds target rate established by the
7 Federal Reserve Board of Governors plus 25 basis points.

8 (iv) CUSTODIAL ACCOUNTS.—The Administrator shall es-
9 tablish custodial accounts to safeguard any collateral pledged
10 to the Administrator in connection with a loan under this sec-
11 tion.

12 (v) PROCESS FOR DISBURSEMENTS AND RECEIPTS.—The
13 Administrator shall establish a process to disburse and receive
14 funds to and from borrowers under this section.

15 (C) LIMITATIONS ON USE OF LOAN PROCEEDS BY SYSTEM-
16 ICALLY IMPORTANT SBA SECONDARY MARKET BROKER-DEAL-
17 ERS.—

18 (I) USE OF FUNDS FOR SPECIFIED PURPOSES.—The
19 Administrator shall ensure that borrowers under this
20 section are using funds provided under this section only
21 for the purpose specified in subparagraph
22 (B)(ii)(III)(aa).

23 (II) USE OF FUNDS FOR OTHER THAN SPECIFIED
24 PURPOSES.—If the Administrator finds that funds pro-
25 vided under this section were used for any purpose other
26 than a purpose specified in subparagraph
27 (B)(ii)(III)(aa), the Administrator shall—

28 (aa) require immediate repayment of outstanding
29 loans;

30 (bb) prohibit the borrower, its affiliates, or any
31 future corporate manifestation of the borrower from
32 using the Authority; and

33 (cc) take any other action that the Administrator,
34 in consultation with the Attorney General, considers
35 appropriate.

36 (c) FEES.—The Administrator shall charge fees (up front, annual, or
37 both) at a specified percentage of the loan amount that is at such a rate
38 that the cost of the program under the Federal Credit Reform Act of 1990
39 (2 U.S.C. 661 et seq.) shall be equal to zero.

1 (d) REGULATIONS.—The Administrator shall promulgate regulations
2 under this section. The notice requirements of section 553(b) of title 5 shall
3 not apply to promulgation of regulations under this section.

4 (e) BUDGET TREATMENT.—Nothing in this section shall be construed to
5 exempt any activity of the Administrator under this section from the Fed-
6 eral Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

7 (f) MONTHLY REPORT.—Not later than the 3d business day of each
8 month, the Administrator shall submit to Congress a report that discloses—

9 (1) the aggregate loan amounts extended during the preceding
10 month under this section;

11 (2) the aggregate loan amounts repaid under this section during the
12 preceding month;

13 (3) the aggregate loan amount outstanding under this section;

14 (4) the aggregate value of assets held as collateral under this section;

15 (5) the amount of any defaults or delinquencies on loans made under
16 this section;

17 (6) the identity of any borrower found by the Administrator to have
18 misused funds made available under this section; and

19 (7) any other information that the Administrator considers necessary
20 to fully inform Congress of undue risk of financial loss to the United
21 States in connection with loans made under this section.

22 (g) DURATION OF AUTHORITY.—The authority of this section shall re-
23 main in effect for a period of 2 years after February 17, 2009.

24 **SEC. 4. CONFORMING AMENDMENTS.**

25 (a) Section 234 of the Disaster Relief Act of 1970 (15 U.S.C. 636b) is
26 amended in the second sentence by striking “sections 231, 232, 236(b) and
27 237” and inserting “section 236(b)”.

28 (b) Section 235 of the Disaster Relief Act of 1970 (15 U.S.C. 636e) is
29 amended by striking “section 231, 232, or 233” and inserting “section
30 233”.

31 (c) Section 237(a) of the Disaster Relief Act of 1970 (15 U.S.C. 636d(a))
32 is amended in the first sentence by striking “The Small Business Adminis-
33 tration in the case of a nonagricultural enterprise, and the Farmers Home
34 Administration in the case of an agricultural enterprise, are authorized to
35 provide any industrial, commercial, agricultural, or other enterprise, which”
36 and inserting “The Secretary of Agriculture may provide an agricultural en-
37 terprise that”.

1 **SEC. 5. TRANSITIONAL AND SAVINGS PROVISIONS.**

2 (a) DEFINITIONS.—In this section:

3 (1) SOURCE PROVISION.—The term “source provision” means a pro-
4 vision of law that is replaced by a title 53 provision.

5 (2) TITLE 53 PROVISION.—The term “title 53 provision” means a
6 provision of title 53, United States Code, that is enacted by section 3.

7 (b) CUTOFF DATE.—The title 53 provisions replace certain provisions of
8 law enacted on or before January 2, 2013. If a law enacted after that date
9 amends or repeals a source provision, that law is deemed to amend or re-
10 peal, as the case may be, the corresponding title 53 provision. If a law en-
11 acted after that date is otherwise inconsistent with a title 53 provision or
12 a provision of this Act, that law supersedes the title 53 provision or provi-
13 sion of this Act to the extent of the inconsistency.

14 (c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—A title 53 provision
15 is deemed to have been enacted on the date of enactment of the correspond-
16 ing source provision.

17 (d) REFERENCES TO TITLE 53 PROVISIONS.—A reference to a title 53
18 provision is deemed to refer to the corresponding source provision.

19 (e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source pro-
20 vision, including a reference in a regulation, order, or other law, is deemed
21 to refer to the corresponding title 53 provision.

22 (f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A
23 regulation, order, or other administrative action in effect under a source
24 provision continues in effect under the corresponding title 53 provision.

25 (g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or
26 an offense committed under a source provision is deemed to have been taken
27 or committed under the corresponding title 53 provision.

28 **SEC. 6. REPEALS.**

29 The following provisions of law are repealed, except with respect to rights
30 and duties that matured, penalties that were incurred, or proceedings that
31 were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Act	Section	United States Code Former Classification
Small Business Act (Public Law 85-536, § 2)	2	15 U.S.C. 631.
	3(a)(1) through (5)(A)	15 U.S.C. 632(a)(1) through
	3(a)(6) through (cc)	(5)(A).
	4	15 U.S.C. 632(a)(6) through
	5	(cc).
	6	15 U.S.C. 633.
	7	15 U.S.C. 634.
	8	15 U.S.C. 635.
	9	15 U.S.C. 636.
	10	15 U.S.C. 637.
	11	15 U.S.C. 638.
	12	15 U.S.C. 639.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	13	15 U.S.C. 642.
	14	15 U.S.C. 643.
	15(a) through (d)(4) (3d sentence).	15 U.S.C. 644(a) through (d)(4) (3d sentence).
	15(e) through (r)	15 U.S.C. 644(e) through (r).
	16	15 U.S.C. 645.
	17	15 U.S.C. 646.
	18	15 U.S.C. 647.
	19	15 U.S.C. 631 note.
	20(a)(1), (2), (4), (b) to (e), (j).	15 U.S.C. 631 note.
	21	15 U.S.C. 648.
	22	15 U.S.C. 649.
	23	15 U.S.C. 650.
	24	15 U.S.C. 651.
	25	15 U.S.C. 652.
	26	15 U.S.C. 653.
	27	15 U.S.C. 654.
	28	15 U.S.C. 655.
	29	15 U.S.C. 656.
	30	15 U.S.C. 657.
	31	15 U.S.C. 657a.
	32	15 U.S.C. 657b.
	34	15 U.S.C. 657d.
	35	15 U.S.C. 657e.
	36	15 U.S.C. 657f.
	37	15 U.S.C. 657i.
	38	15 U.S.C. 657j.
	39	15 U.S.C. 657k.
	40	15 U.S.C. 657l.
	41	15 U.S.C. 657m.
	42	15 U.S.C. 657n.
	43	15 U.S.C. 657o.
	44	15 U.S.C. 657q.
	45(a) through (d)	15 U.S.C. 657r(a) through (d).
	46	15 U.S.C. 657s.
Small Business Investment Act of 1958 (Public Law 85-699)	101	15 U.S.C. 661 note.
	102	15 U.S.C. 661.
	103	15 U.S.C. 662.
	201	15 U.S.C. 671.
	301	15 U.S.C. 681.
	302	15 U.S.C. 682.
	303	15 U.S.C. 683.
	304	15 U.S.C. 684.
	305	15 U.S.C. 685.
	306	15 U.S.C. 686.
	308	15 U.S.C. 687.
	309	15 U.S.C. 687a.
	310	15 U.S.C. 687b.
	311	15 U.S.C. 687c.
	312	15 U.S.C. 687d.
	313	15 U.S.C. 687e.
	314	15 U.S.C. 687f.
	315	15 U.S.C. 687g.
	316	15 U.S.C. 687h.
	318	15 U.S.C. 687k.
	319	15 U.S.C. 687l.
	320	15 U.S.C. 687m.
	351	15 U.S.C. 689.
	352	15 U.S.C. 689a.
	353	15 U.S.C. 689b.
	354	15 U.S.C. 689c.
	355	15 U.S.C. 689d.
	356	15 U.S.C. 689e.
	357	15 U.S.C. 689f.
	358	15 U.S.C. 689g.
	359	15 U.S.C. 689h.
	360	15 U.S.C. 689i.
	361	15 U.S.C. 689j.
	362	15 U.S.C. 689k.
	363	15 U.S.C. 689l.
	364	15 U.S.C. 689m.
	365	15 U.S.C. 689n.
	366	15 U.S.C. 689o.
	367	15 U.S.C. 689p.
	368	15 U.S.C. 689q.
	381	15 U.S.C. 690.
	382	15 U.S.C. 690a.
	383	15 U.S.C. 690b.
	384	15 U.S.C. 690c.
	385	15 U.S.C. 690d.
	386	15 U.S.C. 690e.
	387	15 U.S.C. 690f.
	388	15 U.S.C. 690g.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	389	15 U.S.C. 690h.
	390	15 U.S.C. 690i.
	391	15 U.S.C. 690j.
	392	15 U.S.C. 690k.
	393	15 U.S.C. 690l.
	394	15 U.S.C. 690m.
	395	15 U.S.C. 690n.
	396	15 U.S.C. 690o.
	397	15 U.S.C. 690p.
	398	15 U.S.C. 690q.
	401	15 U.S.C. 692.
	402	15 U.S.C. 693.
	404	15 U.S.C. 694-1.
	405	15 U.S.C. 694-2.
	410	15 U.S.C. 694a.
	411	15 U.S.C. 694b.
	412	15 U.S.C. 694c.
	501	15 U.S.C. 695.
	502	15 U.S.C. 696.
	503	15 U.S.C. 697.
	504	15 U.S.C. 697a.
	505	15 U.S.C. 697b.
	506	15 U.S.C. 697c.
	507	15 U.S.C. 697d.
	508	15 U.S.C. 697e.
	509	15 U.S.C. 697f.
	510	15 U.S.C. 697g.
Public Law 91-151	301	15 U.S.C. 633 note.
Disaster Relief Act of 1970 (Public Law 91-606)	234 (1st sentence)	15 U.S.C. 636b (1st sentence).
Public Law 93-24	9	15 U.S.C. 636 note.
Public Law 94-305	201	15 U.S.C. 634a.
	202	15 U.S.C. 634b.
	203	15 U.S.C. 634c.
	204	15 U.S.C. 634d.
	205	15 U.S.C. 634e.
	206	15 U.S.C. 634f.
	207	15 U.S.C. 634g.
Public Law 95-507	223	15 U.S.C. 637b.
	224(a)	15 U.S.C. 637c.
Small Business Economic Policy Act of 1980 (Public Law 96-302)	302	15 U.S.C. 631a.
	303	15 U.S.C. 631b.
Public Law 96-481	301	15 U.S.C. 649a.
	302	15 U.S.C. 649b.
	303	15 U.S.C. 649c.
	304	15 U.S.C. 649d.
Small Business Innovation Development Act of 1982 (Public Law 97-219)	2	15 U.S.C. 638 note.
Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98-577)	403(b)	15 U.S.C. 644 note.
	404(c)	15 U.S.C. 637 note.
Public Law 99-500	101(a) [title VI, § 630], 100 Stat. 1783, 1783-30.	15 U.S.C. 638 note.
Public Law 99-591	101(a) [title VI, § 630], 100 Stat. 3341, 3341-30.	15 U.S.C. 638 note.
Public Law 100-71	title I, chapter I, proviso in the matter under heading “SALARIES AND EXPENSES” under heading “SMALL BUSINESS ADMINISTRATION”, at 101 Stat. 396.	15 U.S.C. 633 note.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
Women's Business Ownership Act of 1988 (Public Law 100-533)	401	15 U.S.C. 7101.
	402	15 U.S.C. 7102.
	403	15 U.S.C. 7103.
	404	15 U.S.C. 7104.
	405	15 U.S.C. 7105.
	406	15 U.S.C. 7106.
	407	15 U.S.C. 7107.
	408	15 U.S.C. 7108.
	409	15 U.S.C. 7109.
	410	15 U.S.C. 7110.
Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100-590)	132	15 U.S.C. 637 note.
	133(c)	15 U.S.C. 644 note.
Business Opportunity Development Reform Act of 1988 (Public Law 100-656)	2	15 U.S.C. 636 note.
	101	15 U.S.C. 636 note.
	303(f)	15 U.S.C. 637 note.
	304(b)	15 U.S.C. 637 note.
	401(b)	15 U.S.C. 633 note.
	410	15 U.S.C. 636 note.
	504	15 U.S.C. 636 note.
	505	15 U.S.C. 636 note.
602(a)	15 U.S.C. 637 note.	
Public Law 101-189	834	15 U.S.C. 637 note.
Small Business Administration Reauthorization and Amendments Act of 1990 (Public Law 101-574)	203	15 U.S.C. 637 note.
	311	15 U.S.C. 653 note.
	402	15 U.S.C. 637 note.
Women's Business Development Act of 1991 (Public Law 102-191)	3 (2d sentence)	15 U.S.C. 637 note.
Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366)	202(h)	15 U.S.C. 644 note.
	221	15 U.S.C. 636 note.
	222(b)(2)	15 U.S.C. 632 note.
	226	15 U.S.C. 634 note.
Public Law 102-484	4237	15 U.S.C. 638 note.
Small Business Research and Development Enhancement Act of 1992 (Public Law 102-564)	102	15 U.S.C. 638 note.
	306	15 U.S.C. 638 note.
Small Business Guaranteed Credit Enhancement Act of 1993 (Public Law 103-81)	6	15 U.S.C. 634 note.
Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325)	172	15 U.S.C. 6901.
	173	15 U.S.C. 6902.
	174	15 U.S.C. 6903.
	175	15 U.S.C. 6904.
	176	15 U.S.C. 6905.
	177	15 U.S.C. 6906.
	178	15 U.S.C. 6907.
	179	15 U.S.C. 6908.
	180	15 U.S.C. 6909.
	181	15 U.S.C. 6910.
	Federal Acquisition Streamlining Act of 1994 (Public Law 103-355)	2353
7102		15 U.S.C. 644 note.
7104		15 U.S.C. 644a.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403)	212(c)	15 U.S.C. 697d note.
Small Business Programs Improvement Act of 1996 (Public Law 104-208) ...	§ 103(h)	15 U.S.C. 634 note.
	208(d)(4)(B)(i)	15 U.S.C. 683 note.
Public Law 105-85	850(e)(3)	15 U.S.C. 637 note.
Small Business Reauthorization Act of 1997 (Public Law 105-135)	202(b)	15 U.S.C. 636 note.
	416(b)	15 U.S.C. 637 note.
	501(b)(2)	15 U.S.C. 638 note.
	505	15 U.S.C. 634 note.
	507	15 U.S.C. 636 note.
	509	15 U.S.C. 636 note.
	704	15 U.S.C. 631 note.
	707	15 U.S.C. 631 note.
	709	15 U.S.C. 631 note.
Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106-50)	203	15 U.S.C. 657b note.
	301	15 U.S.C. 657b note.
	302	15 U.S.C. 657b note.
	603	15 U.S.C. 657b note.
	604	15 U.S.C. 657b note.
Small Business Innovation Research Program Reauthorization Act of 2000 (Public Law 106-554)	1(a)(9) [title I, § 102], 114 Stat. 2763A-668.	15 U.S.C. 638 note.
	1(a)(9) [title I, § 108], 114 Stat. 2763A-671.	15 U.S.C. 638 note.
Small Business Investment Company Amendments Act of 2001 (Public Law 107-100)	6(d)	15 U.S.C. 697 note.
Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Public Law 108-447)	§ 147	15 U.S.C. 631e.
	§ 152(a)(2)	15 U.S.C. 632 note.
	§ 155	15 U.S.C. 657g.
Public Law 109-59	10201	15 U.S.C. 657g note.
Public Law 109-289	§ 8018 (last proviso)	15 U.S.C. 637 note.
Public Law 110-140	1203	15 U.S.C. 657h.
Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110-186)	3	15 U.S.C. 636 note.
	105	15 U.S.C. 637 note.
	201(b), (e)	15 U.S.C. 636 note.
	202	15 U.S.C. 636 note.
Small Business Disaster Response and Loan Improvements Act of 2008 (Public Law 110-246)	12052	15 U.S.C. 636e.
	12063(b)	15 U.S.C. 636 note.
	12066(b)	15 U.S.C. 636f.
	12072	15 U.S.C. 636g.
	12073	15 U.S.C. 636h.
	12079	15 U.S.C. 636i.
	12085	15 U.S.C. 636j.
	12091	15 U.S.C. 636k.
Public Law 111-3	621	15 U.S.C. 657p.

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Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
Public Law 111–5, div. A, title V	509	not classified.
Small Business Jobs Act of 2010 (Public Law 111–240)	1131(b), (c) 1133(b)(1) 1136 1202(a) 1205(b) 1207 1321 1344 1347(a)(1), (b)(3) 1401(e) 1402	15 U.S.C. 636 note. 15 U.S.C. 636 note. 15 U.S.C. 632 note. 15 U.S.C. 649b note. 15 U.S.C. 649 note. 15 U.S.C. 649b. 15 U.S.C. 637 note. 15 U.S.C. 632 note. 15 U.S.C. 637 note. 15 U.S.C. 636 note. 15 U.S.C. 648b note.
Public Law 112–74	532	15 U.S.C. 633a.
SBIR/STTR Reauthorization Act of 2011 (Public Law 112–81)	5107(e), (d) 5142 5143(a), (e) 5168(a)	15 U.S.C. 638 note. 15 U.S.C. 638a. 15 U.S.C. 638b(a), (e). 15 U.S.C. 638 note.
Public Law 112–239	1622(a), (b) 1631(e) 1633(b), (c) 1653(b) 1681(b) 1681(e) 1682(b), (c) 1683 1698	15 U.S.C. 631 note. 15 U.S.C. 644 note. 15 U.S.C. 631 note. 15 U.S.C. 637d. 15 U.S.C. 645 note. 15 U.S.C. 632 note. 15 U.S.C. 645 note. 15 U.S.C. 645a. 15 U.S.C. 632 note.